UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA

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In Re:	) Case No. 19-30088-DM
	) Chapter 11
PG&E CORPORATION AND PACIFIC GAS AND ELECTRIC COMPANY	) San Francisco, California
	) Monday, June 8, 2020
Debtors.	) 9:30 AM
_____	) ORAL ARGUMENT RE: CONFIRMATION HEARING

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE DENNIS MONTALI
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES (Via Zoom):

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PG&E Corporation and Pacific Gas and Electric Company

SAN FRANCISCO, CALIFORNIA, MONDAY, JUNE 8, 2020, 9:30 AM

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(Call to order of the Court.)

THE CLERK: This is the Bankruptcy Court for the Northern District of California, court is now in session. The Honorable Dennis Montali presiding.

And I'll bring in Mr. Karotkin now.

THE COURT: And Mr. Julian after that, please.

THE CLERK: Yes. Yes, Your Honor.

Mr. Karotkin is joining now, and Mr. Julian is joining now.

THE COURT: Good morning, Mr. Karotkin.

MR. KAROTKIN: Good morning, Your Honor. Can hear you fine.

THE COURT: Good.

And Mr. Julian, tighten your tie. Why don't you both state your appearance for the record, please.

MR. KAROTKIN: Sure. I'm Stephen --

MR. JULIAN: Robert Julian, Baker & Hostetler, for the TCC, Your Honor, and good morning.

THE COURT: Good morning.

MR. KAROTKIN: Good morning. Stephen Karotkin, Weil, Gotshal & Manges, for the debtors.

THE COURT: So Mr. Karotkin, we heard over the weekend from your colleague Ms. Liou about the need to spend some time

on OCC issues this morning, and I also know somebody was busy yesterday filing a new plan. Those are matters that I'll hear from you in due course, including your suggested schedule, but I -- the reason I wanted to start with the two of you today is I -- there's a fair amount of confusion in my mind, and perhaps in others, based upon some things I read over the weekend, particularly Mr. Ziman's two declarations, but most specifically the more recent one.

And then, of course, the sixty-four dollar question. I think I know the answer, Mr. Karotkin, but one of the slides Mr. Julian put up last Friday was page 14 that proposes language in any confirmation order which is pretty clear. Does the debtor agree to that language if I am inclined to sign a confirmation order in the next few days?

MR. KAROTKIN: No, sir.

THE COURT: Okay.

Mr. Julian, with that, I don't want to argue about that, I want to ask you, clarify one phrase. In the fourth line of that slide, the words "plan funding documents" are capitalized, but I -- I'm not sure that those three words together are a defined term somewhere. Did I miss it or is that a phrase that is not a defined term?

MR. JULIAN: There is a -- there is reference. It's not defined precisely, but there is reference to the types of documents, and I can --

THE COURT: That's fine. That's good.

MR. JULIAN: -- I don't have that handy.

THE COURT: That's a good enough answer. I had my homework assignment, and the plan is long and the supplements are long and the documents are long, and I just wanted to make sure, if I am called upon to make this -- the ruling, I need to make sure I'm looking at the right documents.

So Mr. Julian, let's -- I've got a couple other questions that are for both of you, but I really need to put this back to you.

MR. KAROTKIN: Your Honor, can I interrupt?

THE COURT: Yes, sir.

MR. KAROTKIN: It's my understanding that, as we speak, mediation is going on with former Bankruptcy Judge Newsome with respect to the registration rights agreement, so it may be helpful not to get into those issues at this time.

THE COURT: No, I -- I agree with you. It's -- I promise you I wasn't going to get into it, I was just asking for a specific clarification, and obviously, on my wish list is that that mediation is successful. And so I promise you, I'm not inviting to invade the mediation privilege. In fact, to the contrary, I want to keep it going.

MR. KAROTKIN: I guess, Your Honor, my concern is to the extent that -- I don't want to put words in your mouth, you may be weighing in on some of these issues that may influence

the mediation.

THE COURT: I want to clarify some terms that are confusing me. And I'm looking -- I'm looking at Mr. Ziman's declaration that he filed on May 22nd, and in particular the attachment, which is doc 7512-1, entitled "Rights Offering Procedures."

MR. KAROTKIN: Yes.

THE COURT: And I may be confused, but if I'm confused, maybe other people are confused. The text of the rights offering procedures suggest that if one is a shareholder, one has the right to sign up to purchase additional subscriptions.

MR. KAROTKIN: Your Honor, can I -- I think I can clarify this really quite quickly. The rights offering procedures have nothing to do with the registration rights agreement. They are completely separate. The rights offering procedures are procedures that would be implemented under the circumstances where the debtors made a determination -- again, which is in their discretion -- to pursue a rights offering with respect to a new equity raise as part of the nine billion dollars of equity to be raised in connection with emergence. It has absolutely nothing to do with the registration rights agreement that is being mediated as we speak and that was the subject of discussion last week. They are completely different, completely unrelated. So hopefully, that's helpful.

THE COURT: Well, it's helpful, and it's exactly what I thought and you confirmed something. And so what I'm trying to find is where I find the source of this dispute about the registration rights. And again, I respect your request that I not ask to develop it in any fashion, and I won't, and I promise you I won't, and I don't want Mr. Julian to feel he needs to argue his case, but I went back -- and so this kind of segues into another question.

I got to wait until you're looking at me, Mr. Karotkin. That's one of the -- one of the funny things about Zoom. People turn your back on you, you have to wait until they come back.

MR. KAROTKIN: I was -- I'm sorry. I was trying to get a document off the floor.

THE COURT: It's okay. And I'm only kidding. I'm not bothered by what you're doing.

Okay. But that gets to a related question. And you made a statement on Friday that threw me for a loop, and that was that, somehow, the underwriters or the company wants to start the public offering process as early as Friday or Monday. And I couldn't find anything in Mr. Ziman's two declarations, and in particular his more recent one, that tells me anything about that. And so what I don't know is where does that come from other than your statement? And again, I don't think you were deceiving me, I just want to know why that's so.

And then the second question is how can the public offering process even begin if there isn't a resolution of the rights that might pass by mediation or court resolution to the fire survivors? In other words, how can that start without the rights issue being settled?

MR. KAROTKIN: I think, Your Honor, you have to distinguish between the two types of funding raises that are going to be conducted in connection with the implementation to the plan. And one element of that, a substantial element of that, is a debt offering, which is not at all dependent on the rights offering. I'm sorry, on the registration rights agreement.

THE COURT: No, I know that. I know. I'm not talking about the debt offering, I'm talking about the equity raising. I can --

MR. KAROTKIN: The equity raise, I believe, would be -- a prerequisite to that would be a resolution of the registration rights agreement issues, but that could start a little later, I'm told, but is essential. And I can get into this more later for purposes of the debt raise, that certain approvals have been ordered.

THE COURT: I'm not worried about the debt raise. The people know how to do that. Equity raise --

MR. KAROTKIN: But again, Your Honor, in order to do the debt raise, they do need -- they do need certain approvals

from Your Honor.

THE COURT: Okay. All right. You've clarified what I thought was the case and that signals to me that if there's a mediated resolution of the dispute that's extant between the TCC and the debtors, that solves the problem in the sense that the equity process will take its due course. If there isn't a mediated resolution, I believe Mr. Julian made the case that even if I were to sign a confirmation order, there would be a provision that it would come to the court for judicial determination before there could be an effective date.

Is that -- am I correctly understanding your view on that, Mr. Julian?

MR. JULIAN: Your Honor, I was finding the -- I found the definition for you, and if you could restate your question for me, since I was reading. I apologize.

THE COURT: Well, the question -- and I'm just -- I'm just reaffirming something that you said in the argument, that -- and this presumes what you and I hope, or at least I hope, doesn't happen. I hope there is a mediated resolution and I don't have to worry about it, but if there's not a mediation resolution and I am persuaded to sign an order or a memorandum or something to say that I'm approving the plan, then your position -- and I forgot the document, but I believe it was in one of your slides, or maybe it was in your brief -- that even if I were to sign a confirmation order, there would

have to be a judicial resolution if there's not a consensual one on the rights issue, before the plan can become effective?

MR. JULIAN: Yes.

THE COURT: Okay.

MR. JULIAN: Yes.

THE COURT: So you still believe that. And so if I -- if I were to say, well, okay. I can't sign the proposed order that you want because the debtor contests it, but I can sign the order if I'm satisfied that all the other requirements have been met, and then that would start -- that would open a window that I presume would be open at least until your side, or some side, declared the plan dead, and there would never be an effective date. But assume if the only issue was to make a decision on the rights question, it would be something done, in the best-case, before the plan -- or excuse me, before the contractual deadline for an effective date.

MR. KAROTKIN: Your Honor, if I can --

MR. JULIAN: Yes, and --

THE COURT: Well, let him finish that first, yeah. Okay.

MR. KAROTKIN: I'm sorry.

MR. JULIAN: And our point was we believe, respectfully, that the confirmation order, in order to be feasible, must state that the TCC and consenting fire professionals have the rights in the RSA to consent to all

equity and debt financing documents, plan documents. And when I have now found the definition of plan documents, it's in paragraph NN, as in November November, in the debtors' proposed confirmation order, wherein it describes all manner of plan documents that are necessary, including all financing documents necessary to do the financing. And of course, a registration agreement is a document that you need to do the equity financing.

THE COURT: My only distinguishing was that the word "funding" is a capitalized term in your slide. Let's not get bogged down with that.

Mr. Karotkin, again, I want you to weigh in. I mean, I'm not -- I'm not going to make any decisions today, and I promise you, I --

MR. KAROTKIN: I know.

THE COURT: Just tell me -- I think you both have educated me for the questions that I had that arose over the weekend, but go ahead and tell me what you want to say.

MR. KAROTKIN: Okay. I think I need to clarify that with respect -- and I think I indicated earlier, in order to conduct the equity raise for purposes of emergence, we would need the registration rights agreement finalized. And in view of the timing to do that, taking into account the blackout period that I mentioned to you last week, and in order to get this plan to go effective on a timely basis, we would need to

start that equity raise, I believe -- I believe -- and I can get you more information, like, within two weeks, so I --

THE COURT: Okay.

MR. KAROTKIN: -- (indiscernible) --

THE COURT: But that's another way of saying go mediate a resolution in the next two weeks because if there's no mediated resolution, I won't be in a position to make a ruling, obviously, and therefore, the equity raised might be put on the back burner for a time, and there's nothing I can do about that.

MR. KAROTKIN: Well, Your Honor --

THE COURT: Unless you want me to have a deadline for the medication and say, I'll make a ruling, you know, some particular day. I don't think that's --

MR. KAROTKIN: Well, we may have to do that, Your Honor, if this plan is going to be funded and go effective on a timely basis. But my suggestion is let's let the mediation play out, certainly for today, to see where we are, but it may be -- as you said, it may be we must call on you to make a determination with respect to that issue on a rather expedited basis.

THE COURT: Okay. So my last question, really, is not part of this controversy between the committee and the debtor. It goes back to the other point that you stated on Friday, Mr. Karotkin, the so-called blackout and the need to start this

process immediately. I could not find any reference to that, at least in Mr. Ziman's declarations, so where did it come from?

MR. KAROTKIN: There is not --

THE COURT: And what am I supposed to do? Again, I don't think you are deceiving me, but where is it in the record that I know what to -- where that all comes from?

MR. KAROTKIN: There is nothing in the record, Your Honor, other than my remarks. We can be happy to bring the investment bankers back and explain to you how that works. It really isn't, as I said, in connection with the equity raise. It doesn't have -- as far as I understand it, it doesn't have anything to do with whether or not the plan complies with the requirements of 1129(a). It is just a fact of life with respect to raising the funding that will be necessary for emergence, in order for that to be raised in the most economical manner for the benefit of all parties-in-interest. So it doesn't mean --

THE COURT: Let me stop you. I got it. I mean, I -- You're saying the same thing over again. If what you're really saying is you would like to put some pressure on the TCC to come to an agreement, fine, they can do it, but they can try to put pressure on the debtor, too, and I'm not getting into that discussion.

MR. JULIAN: But Your Honor, I would like to respond

to your point about Mr. Ziman's declaration.

So there is no evidence in the record of what the registration rights agreement is or what the underwriters said, and I was precluded, as you know, from going into it because of the mediation privilege, which is why I spent my time with Mr. Ziman stating to him, and I can't talk to you about those matters, right, because they're subject to a mediation privilege --

THE COURT: Right.

MR. JULIAN: -- and he agreed.

THE COURT: I know.

MR. JULIAN: So my rights to cross-examine and to develop evidence were denied. I'm not complaining, but the -- what's sauce for the goose is sauce for the gander, and so --

MR. KAROTKIN: Your Honor --

THE COURT: Well, let him finish, Mr. Karotkin.

MR. KAROTKIN: I'm sorry. I'm sorry.

MR. JULIAN: Okay. And so since we can't go into what that advice was and it wasn't in writing, under the best evidence rule, you really don't have any evidence in front of you.

Look. This is playing out in mediation. We've been trying for two months. If it works, Mr. Karotkin and I are going to be happy. If it doesn't work, though, we're going to need the two provisions that we recommended. One is that our

rights are preserved --

THE COURT: Okay.

MR. JULIAN: -- our consent rights.

THE COURT: Don't reargue your case. I got it. I don't want you to reargue it and I'll tell you another reason why. I don't know if your personal emails are out there, but I must have gotten ten emails over the weekend from survivors who heard Mr. Julian's arguments on Friday and are now emailing me directly, giving them -- me their views on the horribles that they perceive. I'm not going to -- I'm not criticizing those people for communicating with me. I'm not going to respond to them, I just -- I assume that you both, and your clients and your fellow counsel are aware of this, too, it is a -- it is a -- another thing that's a little -- adds to the critical nature of this.

I trust and respect both of you, and when Mr. Karotkin says the underwriters need to do this to start this equity process, I don't question his statement, I just say, okay. if that's the case, maybe it will happen, maybe it won't. And if the mediation is unsuccessful, I'm not going to speculate on what happens next, and I'll leave it at that.

So I'm prepared to conclude this portion of the discussion now and move on to the rest of the things we have to attend to, unless either of you feel obliged to add anything further, but I'm asking you not to, and --

Mister --

MR. KAROTKIN: Well, Your Honor, I feel obliged to say something because what Mr. Julian said about Mr. Ziman's testimony has nothing whatsoever to do with what I was talking about. I was talking the timing of the -- about an equity raise and why these things have to be resolved and he was talking about examining Mr. Ziman with respect to the actual provisions of a registration rights agreement. That's not what I was talking about. I was talking simply about timing, and I don't know how he tried to convert that into something I wasn't even talking about, but --

THE COURT: Well, okay.

MR. KAROTKIN: -- that's where we are.

THE COURT: Maybe that's your take on it. My question, if I were having a conversation with Mr. Ziman, I might ask for some clarification on things that were unclear to me. It's the -- it's the ambiguity or the awkwardness of this whole way that we're dealing with it. I can't absorb everything an expert like Mr. Ziman says, then listen to other people cross-examine, then have a conversation because I wouldn't have -- I wouldn't have thought to ask him about a blackout for securities purposes because it hadn't come up.

So look. One more time. I hope the mediation is successful. If it is not, you two and others will tell me what I'm supposed to do about it, okay? For now, I won't take any

action on it and nobody has to do anything.

And Mr. Julian, unless you want to stick around for what's next, I'm going to excuse you from the panel, but I'm not trying to throw you off and -- but I'm going to ask Mr. Karotkin on other subjects what he believes is the proper agenda for the rest of this morning, if not beyond. So are you good to go or do you want to stay here? What's your pleasure, Mr. Julian?

MR. JULIAN: If it's not going to come up again, Your Honor, I'm good to go. I may raise my hand to come back on something, but --

THE COURT: We'll try to -- we'll try not to exclude you.

MR. JULIAN: Thank you, Your Honor.

THE COURT: And on that subject, Mr. Karotkin, I'd make another statement, too, there. I personally don't like having to be perceived as rude to people. If we were in an old-fashioned courtroom and a fire survivor was in the courtroom and he or she raised a hand or said may I say something, I would do my best to let that person speak. With the Zoom world, when someone like Mr. Abrams or some of the other individuals who have spoken raise their hand, I wish, in a perfect world, I could accommodate them. I simply can't.

So I'm saying this to all the people who are listening in this case that I -- I'm just not going to turn this into an

open discussion. I'm going to stick with the agenda because there are a number of counsel representing clients who have a right to be heard on arguments that are relevant to the confirmation question.

So let me ask you both. There's some noise going on outside my room -- my house here, that -- is that coming through on the speaker or that's interfering with your -- are you able to me?

MR. KAROTKIN: I can hear you fine. I do hear that noise, but it's fine.

THE COURT: It's going away. We had a barking dog the other day, but I couldn't solve that problem. Not my dog.

Mr. Karotkin, what's your suggested agenda for the next couple of hours?

MR. KAROTKIN: Okay. So Your Honor, before we get -- we get to the actual, remaining items to be addressed in the confirmation hearing, I would like to bring the Court up to date with respect to a proposed amendment to the equity backstop commitment letters and the announcement made this morning by the debtors with respect to their equity raise strategy. There was an AK filed this morning, and I believe a press release with respect to that, and I thought it would be appropriate to briefly bring the Court up to date on that item, if I may.

THE COURT: All right.

MR. KAROTKIN: Okay. First, Your Honor, the amendment to the backstop commitment letters, which I just mentioned, will be brought before the Court for approval. Unfortunately, I think we will need to do that on an expedited basis. We may be filing a motion today, if not today, then tomorrow. I can assure Your Honor that the amendment is advantageous for the debtors, all stakeholders, and in particular, Your Honor, advantageous, in the debtors' view and all parties' view, to the fire victim trust, as a future major stockholder, because the amendment will facilitate the debtors' ability to affect a marketed public offering and accelerate its return as a normal capital markets participant, post-emergence from Chapter 11.

And importantly, Your Honor, I want to assure the Court and other parties that the proposed amendment that we will be bringing to Your Honor for approval has no impact whatsoever -- no impact, on the percentage of the reorganized PG&E equity that will be owned by the fire victim trusts on the effective date, pursuant to the plan.

Your Honor, you're well aware of the fact, and in fact you approved the existing backstop commitment letters under which the debtors have the right to call upon, if necessary, up to nine billion dollars in equity financing to fund the plan; that backstop being subject to the conditions set forth in the backstop commitment letters, again, which you approved.

Prior to the proposed amendment, those letters

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contemplated a three-tiered equity offering structure that provided for certain thresholds -- certain stock price thresholds, as a condition to the debtors' ability to effect a marketed offering or a rights offering. While the company believed at the time that the existing commitment letters it entered into and the thresholds contained in those letters could be met, due to the recent market dislocations as a result of COVID, it's become apparent that the thresholds required under the existing backstop letters to execute a marketed offering could not be met, or would not be able to be met, that share price being, approximately, a threshold of 18 to 19 dollars a share versus the current trading price of approximately $12.50, I think, at the close on Friday.

Additionally, the current stock price presents a significant challenge to effecting a successful rights offering, if the debtors chose to do so. Again, that was totally within the debtors' discretion at the required minimum price threshold that was provided for in the existing backstop commitment letters.

Accordingly, Your Honor, absent the proposed amendment to the backstop letters, it was quite apparent that a marketed public offering, which is the most optimum approach to raising equity capital, or a rights offering, could not be pursued and that drawing under or calling upon the existing backstops would be the only alternative necessary to fund the plan, and that

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would be at an approximate share price, under the terms of the backstop letters, of about $7.50 a share.

Although the existing backstop letters certainly provide the debtors with the access to the needed capital to go effective with the plan, drawing on those backstops, as opposed to effecting a marketed offering, would further depress the stock price because of the lower backstop price and delay the transition of the company's shareholder base to more traditional utility investors.

It's in that context, Your Honor, that the debtors engaged in negotiations with certain key backstop parties to achieve an amendment that would permit the debtors to execute a marketed public offering despite the market dislocations and avoid drawing on the backstops at a lower backstop equity price than could be accomplished in a marketed offering. And although the backstop has always served a very important purpose in assuring the availability of the equity or the plan financing, the debtors have always maintained that the most beneficial -- as I mentioned earlier, the most beneficial alternative is to raise the nine billion of equity capital pursuant to a public market offering, as opposed to drawing on the backstop, for the following reasons. And again, all of this will be explained in more detail in the motion we file with Your Honor seeking to approve the amendment.

And those reasons are that a marketed offering should

allow the debtors to raise equity at a significant premium to the backstop price, thereby avoiding additional dilution to existing shareholders and maximizing the value of reorganized PG&E common stock, including the stock that's going to be issued to the fire victim trust under the plan, and investors in a marketed offering are more traditional utility investors, providing momentum to support a higher valuation, again, that would benefit all shareholders. And a marketing offering, again, would position -- would put the debtors in a better position for a future equity raise.

As the debtors reported this morning, the debtors and their requisite backstop parties have agreed to an amendment that will increase the likelihood of raising the nine billion dollars of equity through a marketed offering, including the removal of the price thresholds to which I referred earlier. Of course, the backstop will still be there in the event we need it. That's not going away. It will still be there.

In consideration of the amendment that also, Your Honor, addresses certain other consent rights under the existing backstop letters, relating, for example, to the CPUC plan OII, I believe, the parties have agreed to provide the backstop parties with a fee of 50 million shares, but importantly, Your Honor, only in the event the public offering is affected. They would only get the fee if the public offering is affected. Again, it's payable only in shares of

PG&E Corporation and Pacific Gas and Electric Company reorganized PG&E, so it has absolutely no impact on the cash needs to emerge from Chapter 11. And as I said, Your Honor --

THE COURT: Well, you also -- excuse me -- you also said it doesn't impact the 20.9 percent that goes to the victims' trust, right?

MR. KAROTKIN: Absolutely. Absolutely correct.

THE COURT: So then the new shares come out of the other eighty percent?

MR. KAROTKIN: Well, that's correct. The new shares, as I said, don't affect the number of shares to go to the fire victim trust under the plan in that formula. And actually, I was just going to say that again when you chimed in. And in addition, as I said, the existing shareholders are benefitted by a marketed offering, which would have less dilution.

In addition, we also announced this morning, Your Honor, in addition to the amendment, that the debtors already have obtained commitments for three-and-a-quarter billion dollars of common stock investments from a group of five lending -- from a group of five long-term investors, subject to the amendment to the backstop agreement being approved. And the debtors are confident that the remaining five-and-three-quarters billion dollars of equity contemplated by the plan will be raised if the amendment is approved and the plan is confirmed.

As I said, the amendment is subject to Your Honor's

approval. We will be filing a motion shortly. And I can also say, Your Honor, that if the amendment is approved, as we believe it should be, based upon some of the items I just mentioned, under those circumstances where it is approved, there will be no rights offering.

So that is where we are, and we thought it important to bring the Court up to date about the announcement.

THE COURT: I muted myself for a moment because there was still some outside noise. So if that, what you just described, goes forward, the rights offering that Mr. Ziman previously described, that goes away.

MR. KAROTKIN: That's correct.

THE COURT: And the other issue that's still negotiated, as you pointed out, that's different.

Okay. When do you -- well, I presume that both official committees will have an opportunity to absorb what you've just summarized and they'll be able to see the underlying documents?

MR. KAROTKIN: Yes, and in fact we had a conversation with representatives from the TCC yesterday afternoon to bring them up to date on where we were prior to the announcement. And they are, I'm told, evaluating it.

THE COURT: When do you want it heard?

MR. KAROTKIN: I think we're looking to get it filed today or tomorrow, and we would like it heard next Tuesday, if

that's possible.

THE COURT: Okay. Let's assume that's possible. You know, my own personal schedule is such that I thought we were going to be finished with argument on Friday. Obviously we're not. Maybe we'll be finished with it today, and then the matter is under advisement for me, and whether I have to act on an expedited basis or not is another story.

Okay. So well, offhand, there's no reason why I can't commit and agree with you to have that heard next Tuesday. Let's leave the fine point to a little later in the day. My courtroom deputy, Ms. Parada, can be in touch with Ms. Liou or Ms. Kim.

One other thing that you promised me an answer on, and I presume it's the same question, that even if this change that you just described goes into effect, there's still a five-and-a-half-billion-dollar public offering that has to be contemplated or implemented, and that involves the dark-out black-out period and all of the other stuff, right?

MR. KAROTKIN: That's my understanding, yes, sir.

THE COURT: Yeah, so what is needed from me? Can it be done without an order but nevertheless a judicial published or public decision, such as a memorandum that says I will do this once the order is in final form?

MR. KAROTKIN: I don't believe, Your Honor, that -- first of all, as I said before, I think we need the

registration rights agreement issue resolved before the marketed offering can take place.

And with respect to the other financings, we would need an order entered authorizing those to go forward in order to start the marketing effort on those.

Now, one alternative, Your Honor, that we've contemplated to address these issues, and of course the burden that's being placed on you with respect to these matters, is it may be, if you are willing to entertain it -- again, this doesn't solve the issue with respect to the registration rights agreement, but we could present you with a proposed order authorizing the financing, basically excising from the proposed confirmation orders those particular provisions.

That might be another way to move forward that could work. It will give you a little more time to get a formal confirmation order entered. It's important for the debtors to take advantage of the markets. The markets are pretty robust right now with respect to debt offerings, and I'm told every point of interest rate is in excess of 100 million dollars to the debtors and the rate bearers of California.

So there's a lot of incentive to move forward with that. I don't think it would prejudice anybody. None of it would be -- although certain of those amounts, as we described, would be funded into escrow, if the effective date doesn't occur and the plan doesn't go effective, the status quo would

be returned, less a certain amount of fees and less a little bit amount of interest. But we think that, if we're able to move forward on this basis, that could be the most practical way to proceed.

THE COURT: Okay. But still, I'm a little unclear what I would do. You heard me express my concerns Friday about triggering the finality in the appeal rights. And I understand what the plan says about what it takes for the plan to be effective.

But I also think that there's a certain public psychology to what happens, and if I say I will approve -- I will confirm the plan, but there are still issues about the form of the order -- I mean, think about the various things that you built into the order of the plan that you filed yesterday that I haven't even had a chance to look at.

And then the kind of things that might -- leave aside the big issue between the TCC and the debtor that we've talked about this morning. I'm talking about the little or the smaller points, the points with the trust, the points with the securities litigation, the points with whatever's left with the OCC.

I mean, I don't want to be having a lot of these urgent sessions trying to figure out what the latest version of a draft order means. And you know, you heard me say before I'm a great fan of a one-liner order that says the plan's

confirmed, but I know you don't want that, and I'm not going to insist on it. But it's such a moving target that I don't want to jeopardize the debtors' opportunity to get to the market, but I can't trample on the rights of some of the major players here. And you know who the major players are, and even the minor players. I mean, even if it's one objector who has one paragraph that there's a dispute about what goes in the order, my responsibility is to try to resolve that.

So we don't have to solve the problem today.

MR. KAROTKIN: Well, can I just briefly address your remarks?

THE COURT: Yeah.

MR. KAROTKIN: What I was suggesting as an alternative would not constitute an order "confirming" the plan in an appealable order confirming the plan. It would merely authorize the proposed financing to go forward, just like you did, for example, when you authorized the debt commitments several months ago.

THE COURT: Okay. That's --

MR. KAROTKIN: So it would be similar to that. And then, as I said, if you were to decide, Your Honor, to confirm the plan and enter a formal full-blown confirmation order, we could just incorporate that prior order by reference, and in that way, again, I don't think the entry of the financing would really prejudice anybody.

THE COURT: Okay. Let's assume that that's the approach. So we'll call it the financing order. It would be helpful then -- that's something that I would presumably be issuing once I make the decision on this thing next Tuesday, right?

MR. KAROTKIN: Well --

THE COURT: The backstop adjustments and the revisions that you --

MR. KAROTKIN: I think you could do it before then. Because remember, that's with respect to the equity financing.

THE COURT: Okay. Sorry. Sorry.

MR. KAROTKIN: So I think you could do it before then. And it's not a long -- I mean, we have a draft order. It's not long. It's, I think, six or seven pages, and basically excerpts from the proposed confirmation order, those provisions relating to approvals of the exit financing and the matters related to that, so that the people can go out and raise the money comfortable that what they're doing is authorized by the Court. And again, if we don't close, we don't go effective, aside from some interesting fees, I think no harm no foul.

THE COURT: I think that maybe I lost you in your description of what would come up next week, as far as adjustments to the backstop commitments, that has the effect of altering, if not making more favorable, the public equity raise. But then when you said, based upon the commitment of

five lenders, I understood that to be three-plus billion of the nine-million-dollar equity raise. Isn't that correct?

MR. KAROTKIN: That's correct.

THE COURT: Okay.

MR. KAROTKIN: And what I'm referring to is the balance.

THE COURT: No, I got you, but what's -- see, I may have conflated in my own mind the need to get orders that start the ball running on the equity raise, and you seem --

MR. KAROTKIN: No.

THE COURT: -- to be describing as more about the debt financing. Let's proceed your way. If you can get a sign-off on the debt financing order by at least the two official committees, that makes it a lot easier. I don't think that there's a need for a further hearing on that.

MR. KAROTKIN: Okay.

THE COURT: At least somebody -- well, you need to get something on the docket, so, on an expedited basis, somebody has an opportunity to be heard if there is a legitimate concern about it.

MR. KAROTKIN: We will do that, sir.

THE COURT: And so again, on the assumption that I've come to the conclusion that I should confirm the plan, you're right; I agree with you that an order in place already that is a financing order that, much like so many other orders in this

case, they are all subject to being of various undoing if there's no confirmation. I understand that. But that was the whole point of getting these things out of the way.

So I think I'm okay. And so we're clear, and I don't think you have to educate me any further. Rights offering and registration and rights of the TCC are different concepts. But most of the discussion left me somewhat confused. Okay.

MR. KAROTKIN: Okay.

THE COURT: Let's switch gears, unless you want to say anything more on this, and go to the subject of an agenda.

MR. KAROTKIN: Okay. Now I'm prepared to move to the agenda for today.

THE COURT: Well, you're the drafter of the agenda, as of now, so who's on the agenda?

MR. KAROTKIN: Okay. So this is what I would propose. As you noted, we did file an amended plan last night which we think addressed the matters that had been resolved over the past week or so, and we think that reflects those resolutions. There are still a couple of things outstanding with respect to a couple of the provisions, at least, that the states have raised that we can address later.

And of course the issue with the UCC, unfortunately, we were not able to reach a settlement on that, and so that is back before Your Honor. So that my suggestion is that that be the first item that Mr. Bray, and whoever else wants to speak

on that, can argue their objections and their views on that subject.

I think that after that Mr. Johnston would respond to the PERA objection. And then we will address the remaining unresolved objections as well as the UCC objection, if that makes sense.

THE COURT: I have a note from my clerk that Mr. Schiff wants a brief time, and I presume that's related to what Mr. Bray's going to talk about; is that right?

MR. KAROTKIN: That's my understanding.

THE COURT: Okay. Well, let's bring Mr. Bray into the room, and let me take a quick look at the people who have their hands up. I see Mr. Mintz has his hand up. Mr. Abrams has his hand up.

Mr. Abrams, I'm not going to call on you for now. Maybe I'll come to you later.

Mr. Hallisey, honestly, I'm really not inclined to revisit the arguments that you raise, but I may be persuaded later.

Mr. Bray, why don't you -- well, why don't you state your name for the record, and I'll ask you a couple of questions specifically.

MR. BRAY: Sure, Your Honor. Good morning, Gregory Bray, Milbank LLP, counsel for the official committee of unsecured creditors.

THE COURT: So what other counsel are you in touch with that are likely to want to participate in this phase of the discussions? Does that include Mr. Mintz, for example? I mean, I know who his client is and what he represents, but they haven't been aligned exactly with your committee. Who --

MR. BRAY: Well, Your Honor, we had -- I know that they're counsel for several of the vendors who want to be heard. I'm sorry I don't remember everyone's name. But they have asked you, in the past, they wanted to trail what we were saying so there was some continuity in the arguments.

I know that I think counsel for Citibank wants to be heard. I know that counsel for the state agencies and the municipalities share the concerns we have and they would like to be heard.

So I can't tell you the exact number of parties, but virtually every unsecured creditor of the type that is, sort of, within the constituency, other than the noteholders who are settled, want to be heard on a similar set of issues.

THE COURT: Okay. All right. Let me do this. I will hear from you now, and then I see Mr. Mintz and -- I think it's Mr. Schiff who, if I'm not mistaken, is Citibank's counsel. And I will come back to them in a while. I see another person whose name I don't recognize, but I'll deal with that later.

Mr. Bray, why don't you go ahead? And previously we had you down for about fifty minutes. You take what you need,

and I, sometime ago, read through your objections and am pretty much familiar with the issues, but some time ago is like four days ago, which doesn't mean I can keep track of everything. But you have the floor.

MR. BRAY: Thank you, Your Honor. And just following up on your last statement, I am going to try to not wade into the heavy details, because I know we have covered them in our briefs, and I know when the dust settles here you will want to go back and read those briefs. So I'm not going to try and overload, sort of, the intake on all of these issues today. I will certainly address them, and then I will rely on the Court's re-familiarizing itself with some of the subtleties of these issues in both our objection and our surreply, which we thank you for allowing us to file, because I do think it clarified, in many respects, what are the remaining outstanding issues.

And just to go back and just remind the Court again, there are a number of issues that we have resolved with the debtors, and the revised plan on file deals with those. It does not deal with the issues that Mr. Karotkin covered in his -- what he read into the record last week. And those issues remain open.

We have not had an opportunity to fully review the plan that was filed yesterday. I'm told, on a very brief review, it didn't really substantively change much of anything.

Nor have we had a chance to go through in detail the confirmation order.

Let me just also raise one other point. What I would propose to do, Your Honor, at the end of the hearing today, is to file with the Court a proposed list of modifications to the plan and the disclosure statement that the committee believes would resolve the committee's issues, so you will have that. You can see the actual words, take your time with it and study them, and decide if they're acceptable or not. The debtor can respond to them. You can pick and choose, but I do want to try and make this as easy for the Court as possible in terms of trying to give you language that solves our concerns. Other parties may have issues too, but in trying to come up with a solution to what are difficult issues in the process, we're hoping that that helps the process.

THE COURT: Okay. I do think it will help.

MR. BRAY: Yeah. So Your Honor, turning a little bit more now to the substance, as I said just a moment ago, you heard, in the form of objections, from virtually every type of creditor, unsecured creditor constituency in this case, that the plan is essentially fatally flawed. It violates 1129(a)(1),(2), and (3) in respect of certain issues related to discharge, releases, cure and assumption, indemnity, and contribution claims.

The debtor has, in some sense, resolved the discharge

issue by its agreement to modify 10.3. So I'm not going to spend any more time directly on that. I'm going to focus, principally, my attention on the cure and assumption issues that tie together with the indemnity and contribution issues. And then I'll spend some time on the other issues, as well, that Mr. Karotkin raised, in his statement on the record, about what we were attempting to resolve last week.

And first, I want to start with two statements of legal principles. The first is that, as the Court knows, that the plan purports to render us and treats us as unimpaired. We were disenfranchised and not allowed to vote, and in fact, to some extent, have been sidelined from the plan process by the debtors' position, you're unimpaired; we don't really need to deal with you. And as the Court knows, unimpaired, under the Code, 1124(1) says: "leaves unaltered the legal, equitable, and contractual rights to which such claim or interest entitles the holder of such claim or interest".

The second principle that I think is worth stating here is stated by the Ninth Circuit in the Frontier Properties case, 979 F.2d 1358. And I quote: "The cost of assumption is nothing short of complete mutuality and requires performance in full just as if bankruptcy had not intervened."

So in many respects my comments today really are teed off of those two legal principles and then some statements in the debtors' brief in respect of 502.

But the primary issue that is still unresolved with the debtor is the notion that indemnity and contribution rights of a creditor, whether or not in a contract or otherwise, are no further force and effect once a plan is confirmed. That's the debtors' position. They've taken it in their brief, they have now restated it in court.

And I want to focus on the two aspects of that. First is the rights of parties who have contracts, executory contracts that are being assumed by the debtors. And the quote I just read from Frontier Properties is applicable to that situation. And I think it's clear and unequivocal; it means what it says.

And what we have in the plan is an almost Orwellian interpretation of that principle of law which is I'm going to assume the contract, but in the act of assumption, I'm going to invalidate your rights to indemnity and contribution. When I say "indemnity and contribution", I'm short-handing for those types of claims. We know what they are, and I'm not going to get into every specific example of it.

My point is that it's the precise opposite of what the law requires. You don't get to assume and cherry-pick or invalidate. If you assume, you take the contract as it is with the indemnity and contribution provisions riding through.

THE COURT: Mr. Bray?

MR. BRAY: When Congress --

THE COURT: Mr. Bray?

MR. BRAY: Yes.

THE COURT: Is there any legal difference between a contract that is a formally assumed and another one that so-called rides through because it's never been dealt with at all in the plan. Is there any difference?

MR. BRAY: Your Honor, my understanding of the way the plan is drafted is there are schedules that I think -- I believe the plan says if it's not assumed it's rejected.

THE COURT: Okay. Well, but the law -- well, I'm not sure that it says that, but it might. But the case law says that --

MR. BRAY: Yes.

THE COURT: -- a plan that is neither specifically assumed nor rejected passes through, which is not a legal term, but essentially it's the same as cure. I mean, it --

MR. BRAY: I agree with that, Your Honor, especially in the context of impairment or nonimpaired. And that's why --

THE COURT: Okay.

MR. BRAY: -- I took a moment to read the statute because that's exactly our point is -- I'm going to shorthand the statement for you, and I'll just set it out there. As a general principle, the rights of unimpaired creditors, with very limited exceptions set forth in the Code, should be riding through this plan, unaltered, unaffected, "unimpaired". That's

what the statute says, and that's what the cases concerning the statute say. In fact, as you know, they say even a positive modification in the favor of a creditor constitutes impairment that allows the creditor to vote in the plan. So I --

THE COURT: No, I understand. I understand. But if you just have a debtor who has one contract with somebody and -- you know, some sort of a contract, and the debtor says I'm going to assume this contract, then it rides through, and certainly that creditor is not impaired if the debtor says I'm assuming your contract. And --

MR. BRAY: Without exception to --

THE COURT: Yeah.

MR. BRAY: The only exception the Code allows, Your Honor -- there are two; Congress has been very clear about this, an ipso facto clause, and an anti-assignment clause. 365 is very, very clear about what types of provisions are not "enforceable" by the counterparty. So --

THE COURT: No, but if I have a contract with you that says Montali does this and Bray does that, and it has some standard issue indemnity and contribution type language and -- I'll put you in bankruptcy rather than me -- and you file bankruptcy, and you assume the contract with me, and leave aside the -- there's nothing to cure, I think the result is that you and I still have whatever mutual -- or strike "mutual" -- whatever contribution and indemnity rights that we

had before bankruptcy.

And I think the same result would apply even if you didn't formally assume the contract, you didn't do anything, you just got your plan confirmed. I think our contract would pass through with all of those -- you know, all the warts attached, all the good things and all of the bad things, right?

MR. BRAY: I agree with that statement, Your Honor.

THE COURT: Okay.

MR. BRAY: And as I said -- and in this instance, again, looking at it through the prism of unimpaired assumption and indemnity and contribution and ride-through what is particularly noteworthy here is, while the debtor certainly attempts to state that, as a legal matter, we are tilting at windmills here and in fact it's the Code that is somehow giving them these rights, under 502 or otherwise, and that we're missing the mark by virtue of your decision on PPI, which is a completely different situation, there is nothing in the Code, as I pointed out, that limits our rights in the fashion that the debtor attempts to. But the debtor essentially admits as much in the plan.

In the plan supplement, which we mention in our surreply, Your Honor, in our opening brief, buried in 2,000 pages of exhibits, is a statement that basically says that -- let's see if I can find it here, Your Honor. One moment. I've got so many papers. It basically says, "except as set forth in

Section 8.4 of the plan" -- and we'll get to that in a minute -- "with respect to the D&O indemnity obligations. The assumption by the debtors of all executory contracts pursuant to the plan shall result in the full release and satisfaction of all contingent pre-petition indemnification claims, and any proof of claim premised on a pre-petition contractual indemnification obligation alleged to be owned by the debtors shall be deemed disallowed and discharged except for the D&O claims." So if in fact it is true that, as a legal matter, that is what the law requires, how can the D&O's rights work? This is a classic example of cherry picking.

THE COURT: Well, but what if the contract that has been assumed, there are no contingencies that exist, there are no rights, there's nothing for which there needs to be indemnity. The way you just read this excerpt struck me as dealing with pre-petition things; it didn't say that those provisions disappear post-petition.

MR. BRAY: Well, the debtors' position is they do. That's exactly the dispute.

THE COURT: But do they? But why wouldn't they disappear under any --

MR. BRAY: They shouldn't.

THE COURT: I mean, look, I think -- I wonder whether you're overstating your case. We can agree that if there's a contract -- let's go back to the Bray-Montali contract.

MR. BRAY: Um-hum.

THE COURT: And you want to assume the contract with me, and I believe that you owe me 1,000 dollars.

MR. BRAY: Right.

THE COURT: Not for a cure of a traditional default-like lease, but because --

MR. BRAY: Right.

THE COURT: -- because you should be indemnifying me because something that happened pre-petition that made me incur a 1,000-dollar expense that I think you should indemnify me for. But you assume the contract, and I don't do anything, I don't assert a claim for 1,000 dollars. I think the answer is I'm out of luck because there existed a right, whether it's contingent or -- well, a right that you could know about it. It's within fair contemplation, to use a traditional Ninth Circuit 365 term.

And I think I should be out of luck on that one, but the next day after confirmation, if you do something that triggers another kind of indemnity, I think I have a right to assert it against you. And I don't hear -- I mean, I doubt that the debtor would disagree with that, so --

MR. BRAY: Your Honor, let me see if I can break that down. The cure simply means the debtor has the right to assume the contract. It doesn't operate as discharge. There's no law I'm aware of, no case that says that the active cure discharges

claims. In fact, the Ninth Circuit has said the opposite, that all the active cure does is it is a predicate to the act of assumption, nothing more. There's nothing in 365 that says it constitutes a discharge or anything else. It just simply says this is what you had to pay to assume the contract. Once it's assumed, all of its obligations remain in full force and effect.

THE COURT: I know, but again --

MR. BRAY: That's what the Ninth Circuit is saying.

THE COURT: -- you seem to agree that if we had an identifiable monetary cure so that you're my tenant and I'm the landlord, and you own me 1,000 dollars in back rent, and you move to assume the lease, and you say there are no defaults, and I fail to say, yes, there is, there's a 1,000-dollar default, I think it's pretty clear, if the Court approves that assumption, you don't have to pay me the 1,000 dollars. Don't you agree with that?

MR. BRAY: No, actually, Your Honor, I would slightly -- let me put it this way. I can't state that you couldn't assume the contract. You cured what was stated that had to be cured to assume the contract. So the act of assumption occurred. I would not agree that the claim was discharged.

THE COURT: But okay, maybe it's not discharged as a matter of bankruptcy law, but you, the debtor, say I don't owe

Montali any back rent. Montali is asleep at the switch and does not assert 1,000 dollars of back rent, and the contract's assumed. I think the case laws are clear that I can't then come back after you later and say, hey, Bray, you own me 1,000 bucks. Your answer would be I cured that lease and assumed it.

Now, let's change the facts. Mr. Karotkin --

MR. BRAY: Your Honor, I would say you cured that obligation.

THE COURT: Okay.

MR. BRAY: You didn't cure any other obligation in the contract, and that's an important distinction.

THE COURT: But if I --

MR. BRAY: Property rights are a bundle of rights. Yes, you cured the obligation to pay rent by tendering me the 1,000 dollars, and I accepted it. That payment of that obligation is satisfied. It doesn't satisfy any other obligation in the contract.

THE COURT: No, you're twisting my hypothetical. In my hypothetical, you owe me 1,000 dollars.

MR. BRAY: Oh, I'm sorry. Okay, sorry.

THE COURT: And I fail to assert the claim for 1,000. Bray files the motion and says I want to assume the contract with Montali, there are no defaults. Montali doesn't do anything, but has notice, and doesn't come in and say, wait a minute, Bray, you owe me 1,000 dollars. If I don't say it, I

think I'm out of luck. And whether it's legally discharged or contractually discharged is probably angels on a pin. But now let's change the facts.

Mr. Karotkin has a damage claim because of something you caused, but he has a right to assert it against me. So he hits me up for the 1,000 dollars, and I know that he's out there, and I don't assert my indemnity or contribution claim against you because it's a pre-existing default. Hey, Bray, you should have paid Karotkin his money. He got me instead. I have a right of indemnity. To me, if you assume the contract, and I don't assert that claim, I've left it on the table and you win. That's my take. Again, you can disagree with that.

MR. BRAY: In your hypothetical, the 1,000 dollars was due and owing under the indemnity clause at the time it was assumed; is that correct?

THE COURT: Mr. Karotkin did something that he was owed money by you, but he had a right to assert it against me too. Maybe I'm the guarantor. Let's say, you know, I said to Karotkin, don't worry, Bray is good for it, he'll pay the bill. So Bray goes into bankruptcy, Karotkin says, hey, Montali, Bray just stiffed me for 1,000 dollars; make good on your guarantee. So I have a contribution or indemnity claim against you if I am forced to pay Mr. Karotkin. But I don't do it. I'm asleep at the switch. I don't assert an indemnity claim that I could have asserted and that I had knowledge of.

And to me, whether it's an 1141 discharge, or a 365 discharge, or a state law discharge, that's for the scholars of the academics. For my take, if I have notice of Mr. Bray, you owe me back rent, Mr. Bray, you owe me because you made me incur guarantor obligation to Mr. Karotkin, I have the right to assert both of those against you. If I don't do it, and you assume the contract, you win, I lose. I think that's all we're talking about here.

Now, Mr. Karotkin, if he likes my reasoning, he's going to say that's a brilliant analysis, and if he doesn't like my analysis, he'll say so. But I don't think, to take the hypothetical one step further, if the plan's confirmed on a Monday, and on Tuesday you breached the lease, or Mr. Karotkin causes -- he has a claim that he can assert against me as the guarantor, I can assert an indemnity claim against you, post-petition, and there's no discharge, there's no bankruptcy relief available; you are on the hook.

And I think that's what's happening here. And I don't know what to say about the D&O issue, but if you represent thousands of general creditors that want to have indemnity and contribution obligations passed through, then your constituents should be asserting them in response to the assumption motion if they pre-existed the bankruptcy. And if they didn't exist in the first place, you're not at risk.

Anyway, I'm making the argument. I should let you

make it.

MR. BRAY: Your Honor, a couple of observations. One, there is no assumption motion. The debtor is relying on the general bar date to play gotcha here.

THE COURT: But --

MR. BRAY: So that's a significant distinction.

THE COURT: Oh, that's not true. The request to confirm the plan is the motion.

MR. BRAY: Well, but there's no formal time period in there to actually say you need to assert the -- well, let me move on.

THE COURT: Yes, there is; it's called deadline for objection.

MR. BRAY: I understand.

THE COURT: Right?

MR. BRAY: I understand. My other point is, Your Honor, I'm not sure I agree, at the end of the day, that there is nothing in Section 365, and there's no case that the debtor has cited, at least, that would support the notion that cure is effectively the equivalent of discharge. Again, I don't want to repeat myself, but I maintain that the act of cure only allows the assumption of the contract, nothing more.

THE COURT: I'm just going to --

MR. BRAY: The contract rides through, as per the Ninth Circuit's statement that it requires performance in full.

THE COURT: I'm just going to quarrel with you one more second. I don't think this is a cure issue; I think it's a nonassertion of a right issue. And there's nothing -- if I don't assert the indemnity entitlement, then that, to me, is legally no different from failing to assert a cure amount that I could have asserted. Anyway, let's move on.

MR. BRAY: All right. Your Honor, I do think there's a difference, but let's move on. I agree.

Your Honor, the other point I was going to make was, interestingly -- and this goes to your point -- in Section 8.4 of the plan -- let me see if I can grab that, if I may, quickly. I guess maybe this addresses your issue as well, leaving your hypothetical.

The plan says -- and I'm going to use the D's and O's again as my sounding board -- that there's always -- as you know, there's always this hypothetical legal issue about what are the rights D's and O's really have when they ride through. How do we frame their rights, in a legal fashion, to justify the complete ride-through of their rights?

And you'll see in the plan, here's how the debtors are in Section 8.4. They said that, essentially, that the rights of the D's -- that the corporate documents, whatever rights under anything, under any written agreements, or anything at all that the D's and O's have with respect to indemnification, are deemed to be executory contracts, and as a result of

that -- and I'm going to quote, "shall remain in full force and effect to the maximum extent permitted by applicable law, and shall not be discharged, impaired, or otherwise affected by this plan. All such obligations shall be deemed and treated as executory contracts that are assumed by the debtors under this plan and shall continue as obligations of the reorganized debtor. Any claim, based on the debtors' obligations in this section, including indemnities, shall not be a disputed claim or subject to any objection, in either case, by reason of 502(e)(1)(B) or otherwise."

So I think the debtors' own plan disagrees with, essentially, the hypothetical you've presented me before, Your Honor. They've taken the exact opposite position as to what the consequence of assumption or being an executor or having the rights of a party whose executory contract is assumed, what that means.

THE COURT: Why is it unfair or inappropriate for a trade creditor to be treated with the traditional principles of if a solvent debtor says, I'm going to cover any liability that officers and directors have? How does it hurt another -- a trade creditor or anybody else in a solvent case?

MR. BRAY: It doesn't hurt them. It just is simply a statement of the debtor's interpretation of what it means to have an executory contract.

THE COURT: Okay.

MR. BRAY: That's my point. If they had just said, because I want it to be so, this is what I'm going to do, then that would be one thing --

THE COURT: But what --

MR. BRAY: -- but that's not what they said. They said it's an -- they have a right to the holder of an executory contract. And what flows from that is what I read.

THE COURT: Okay.

MR. BRAY: And by the way, I'm going to go back again to where I started, which was that 1124 says, unimpaired. So I also want to layer that on top of your hypothetical -- why is this a different situation? Because they were unimpaired. If you marry those principles up, I think it means we ride it through.

THE COURT: Okay.

MR. BRAY: So Your Honor, I think -- a related issue, which touches on the rights of non-upholders of -- nonexecutory contract rights of unsecured creditors in this situation. And there, I think I'm probably more in sync with some of the thoughts here. In this case, the debtors, by virtue of the plan supplement and in their confirmation brief took the position that those rights are extinguished -- well, those rights being indemnity contribution -- are extinguished as a matter of law under 502(e)(1)(B). No mention of 502(e)(2). They basically just said they're gone, obliterated, and --

whereas the debtor says, we're misinterpreting what statutory impaired versus nonstatutory impairment -- it's actually quite the opposite. Their brief takes the position that we have no rights under 502(e)(2), which mandates that once the claim is liquidated, it shall be allowed in the respect to the indemnity contribution. The statute says "shall". It's a mandatory allowance issue subject to the normal types of issues. But it --

THE COURT: Okay, let's go back to my hypothetical with you and Mr. Karotkin and me. Mr. Karotkin has -- he contends that you owe him money, but he also contends that I'm going to have to pay him money because I have indemnified or guaranteed your debt. So you file bankruptcy and I file a claim for my guarantor claim against you, but I haven't paid Mr. Karotkin yet.

I believe under the law, my claim would be disallowed because I haven't paid him yet. But if some day in the future, I am forced to pay him, then I believe 502(e)(2) kicks in and I get -- the contingency of my claim against you has matured. I know have to pay -- because I'm now -- I'm obligated to pay, I have a right against you.

So that to me is the way the statute works. He should have filed a claim -- or I could have filed a claim on his behalf. And I can't -- particularly in an insolvent case, I can't file a claim on my behalf and compete with him. That's

the principle of 502(e), right?

MR. BRAY: Yes. And I'm going to seize on a word you said. Couple points. One, we're not talking about a contractual assumption issue. We're just talking about general rights. And two, the insolvency point you made -- 502, this legislative (indiscernible) very clearly states it's designed to essentially not have competing recoveries for the same claim -- the same claim -- with the insolvent debtor under the principle of equality of distribution.

Well, first, the focus of the concern here -- again, a little background -- we're -- the genesis of this issue arises in respect to the debtor's assignments of their litigation claims against the vendors, the tree trimmers, the people that they're relying on to keep them compliant with their obligations under 1054. It's those people whose claims are being assigned into this fire victim trust, essentially being thrown to the wolves.

So the issue -- and those claims and what we will have is essentially those potential defendants having two claims come up here: one from the victims themselves and then whatever rights the debtors had.

Now in respect to the victims themselves, when they -- that's a completely separate basis for recovery, unless the TCC is going to say otherwise, which I highly doubt. So 502 is isn't implicated there because it's not a double recovery on

the same claim. It's a separate basis of why they're billing.

So to the extent under applicable state law -- we don't need to debate whether it's there or not; we're not pressing that issue now -- if it exists, 502 isn't even implicated because it's a separate basis of liability. So -- and I'll get to your point about the proof of claim in a second -- but essentially -- and we don't need to resolve the issue completely because we acknowledge, as we did when we talked to the Court about this in the settlement, that a reservation of rights with respect to 502 may be appropriate, that the Court may not want to get into every permutation of that issue. I'm merely pointing out that it is not at all clear that it applies, and especially since we don't -- we have a solvent and not an insolvent debtor -- this concern about diluting other creditor's recoveries by essentially a double payment on the same claim -- just simply isn't implicated here.

So I take it a step further. Maybe there's an argument that's applicable, but actually, if you step back and think about it, 502 really isn't applicable here. So the attempt by the debtor to essentially use a statute which is -- it's debatable if it has any applicability, but excise the rights under 502(e)(2) from the creditor, that is impairment. That is the classic -- that's the worst kind of impairment you can. You're basically depriving this group of creditors of their statutory rights, and again, I know -- just to complicate

it a little further, I'm going to again layer on top of this 1124. Statute says they have to be unimpaired. That's the guiding principle for having disenfranchised this group of creditors is you cannot -- I won't read the statute again. We know what it says. That principle of law has to be respected with respect to every interpretation of the rights of the parties under the circumstances. And that's the point I can't stress enough.

And Your Honor, I said this early on, but again, I want to circle back to -- you know, essentially every creditor class who holds an executory contract -- BPAs, the government parties -- everyone has raised the same issue. It is a chorus of voices. This is not a -- I don't think in terms of the executory contract -- I'm not -- I mean, as I look at it, it's not even close. This is a open and shut issue. I'm not intending to any fashion -- I just -- I think from the creditor body, given the chorus of voices on this issue, that that -- it makes the issue all the more interesting that it really is subject to debate. I take the Court's comments for what they are. I respect those. I just want to set the stage for you that this is not, from the creditor's perspective, a nominal principle of law in terms of riding through, in terms of these rights.

I said enough about that. I want to turn to a couple of other issues, if I may.

THE COURT: One more question. What's the fix?

MR. BRAY: Sure.

THE COURT: The committee hasn't asked me to deny confirmation, so what's the fix if I agree with you?

MR. BRAY: I will -- we will submit to you at the end of today, proposed language that fixes this issue and our other issues. And they will be relatively short. They can be added to both the plan and the confirmation order and, at least we believe, will resolve the issue.

THE COURT: Okay.

MR. BRAY: Okay?

THE COURT: I'll look forward to something then.

MR. BRAY: Yeah. And we would -- I have a draft of it. I just want to read it. I want to make sure we like it, and then we'll file it.

THE COURT: Okay.

MR. BRAY: So Your Honor, we talked about, essentially, contribution of debtors (Indiscernible). The -- there were some other issues -- and these came up with Mr. Karotkin -- that one of the issues was an acknowledgment regarding retained rights and defenses of these entities who are being thrown to the wolves in the fire victims' trust with respect to the idea that whatever rights and defenses they have -- right -- or go along with the claims that are being assigned. Now, I don't really think that's a controversial

issue of law. I think the Court stated as much when we spoke about this the other day, and in fact, I won't -- in debtor's briefs, page 63 and 68 of the file copies -- I won't pull them out now -- they basically say that that's right, that they're not attempting to basically strip them of those rights. The debtor's argument is with respect to indemnity and contribution back against the debtors, not with respect to the rights and defenses that would flow with the assignment of the claims. So we're also going to submit language on that.

THE COURT: You're familiar with the decision I issued on the trust challenge by the major corporate claimants, right?

MR. BRAY: Some.

THE COURT: Well, okay. I mean, the big issues had to do with access to a Court and the subrogation offset issue.

MR. BRAY: Right.

THE COURT: But I thought I identified as something that I thought was a -- could be clarified in the drafting is something that Ms. Winthrop and Mr. Mintz and the other counsel representing the major corporate fire victims in the TCC of the trust, and I haven't heard back on that. I thought that was going to -- was getting resolved, but it seems like it's the same issue here. You can't have set off -- I'm sorry, set off in a counterclaim.

MR. BRAY: Recruitment.

THE COURT: Issues divided it up going both ways. It

PG&E Corporation and Pacific Gas and Electric Company

could either be one of the other, and I thought that was clarified. But we'll see what other people said later on.

MR. BRAY: Agreed, Your Honor, and again, we're talking about rights and defenses. So I offered essentially the idea that they all flow together and there's mutuality there. It's not a one-way proposition. Everyone's rights on those issues are essentially reserved and preserved. We'll also submit language on that.

I don't think that is a -- as I understand it -- even the debtor's own confirmation brief -- I don't really think that that's a proposition that is challenged, but it does bring to mind an issue with respect -- since you raised it -- the fire victim's trust. We do have a concern, and I thought this was really in the nature of a clarification, but apparently not -- these indemnification contribution rights that we spent a fair amount of time discussing, there is an interpretation that to the extent that those are allowable claims, for lack of a better word to say it, against the debtors for indemnity contribution, that those obligations to pay by the debtors are channeled to the fire victims' trust such that the fire victims themselves, their recovery will be diluted by the debtor's obligation, either statutorily or by contract, to pay the contractual counterparty or the vendor under a right of indemnity.

I didn't think that that was the intention, first off,

because the debtor's first said no such claims can be allowed, and second, the vendors and the unsecured creditors are not the fire victims here, so trying to have the fire victims -- have them recover from a trust intended for the fire victims seems to me to be unusual, but that is an interpretation, and when we've asked for clarification on that, we've been met with a resounding silence.

THE COURT: I thought that was already clarified, and maybe at some point, but not in this segment, Mr. Karotkin can clarify the issue. But I don't want him to do it now because I need to let you complete your argument and --

MR. BRAY: I understand, Your Honor.

THE COURT: -- other people that want to object. But to me, that's in the probably a nonissue category. But I could be wrong.

MR. BRAY: I hope you're right. That's all I'll say.

THE COURT: It would be an interesting disposition of the trust if the debtor got to channel the trust and then drained it all out again.

MR. BRAY: Um.

THE COURT: I don't think that's going to happen.

MR. BRAY: Paying the vendors -- I'm just not sure that that -- that's an interesting interpretation. That's all I'll say.

So Your Honor, I think that that covers the issues we

raised. I do want to say several more things about the arguments you're about to hear, and I want to lend some support to the arguments of the state and others challenging the provisions of Section 8.2(e). We looked at that as well, and let's just say that while we think that our proposed fixes to the plan solve the problem, it is -- as drafted -- and has the potential to create mischief and ambiguity, and we just don't see why that type of a provision should stand as drafted. There have been several recommended fixes to you from the other parties in terms of clarifying how that provision should work. We would be supportive of that or we would either be supportive of just simply striking the provision.

If you look at the input, it's sort of an unnecessarily cumbersome attempt to restate what the rights are as a matter of law, and I think that as a matter of law, the parties' rights are otherwise reserved and preserved. As I said, it just creates mischief.

Similarly, the -- there was a concern expressed about the Court not having -- or about the debtor's being able to make modifications to the plan without an order of the Court. We also share that concern that there not be any substantive modifications to the plan whatsoever. The Court should have to approve those changes, especially given the amount of litigation that has occurred in respect of the terms of this plan itself.

Then, Your Honor, lastly -- believe it was the municipalities filed an objection. It's a proposed language with respect to Section 10.13. In one of your text orders, you asked why shouldn't I adopt this provision, especially with respect to the GUCs?

And some of the language addressed not just the GUCs, but the -- or not just the municipalities, but the GUCs. I think there's some merit to that. It cuts through --

THE COURT: Mr. Karotkin, frankly, had a heart attack when he read it at the remarks.

MR. BRAY: What it does is -- I'll tell you (indiscernible) --

MR. KAROTKIN: Your Honor, I thought we had resolved this with Mr. Bray. I don't know why he could raise that issue now.

THE COURT: Yeah, I thought it was --

MR. KAROTKIN: I'm actually quite -- I'm actually astonished that he would go before the Court today and raise an issue that he said was resolved.

THE COURT: Come on. Let's take it easy.

MR. BRAY: Well, wait it out. I settled --

THE COURT: Mr. Bray --

MR. BRAY: Your Honor. I'm perfectly happy to live by our settlement offer. I'm not the one -- I'm mystified by this.

THE COURT: But take a look at that.

MR. BRAY: I live by the settlement.

THE COURT: Take a look at the -- last night's version of 10.13.

MR. BRAY: I haven't seen it yet, Your Honor.

THE COURT: Yeah. I haven't. So, okay. Let's -- that's it for you? Mr. Bray, we cover all your --

MR. BRAY: Yeah, yeah. Your Honor, just to be clear about this. Other than what I said about the fire victim's trust, I don't think I said anything inconsistent with what we said to the Court in terms of the settlement last week. I -- as a matter of fact, if it becomes an issue, I would urge you to go back and read the transcript on this issue, and then you could decide if anything I have said is inconsistent with the settlement that we talked about.

THE COURT: I got lots of things to do, but going back and (break in audio) --

MR. BRAY: I understand.

THE COURT: -- is not my first choice of things to do.

MR. BRAY: That's why -- I didn't want to go there. You've got a lot to do, and I -- you know, it didn't work and it did work. But I think I'm getting sort of somewhat unfairly categorized as having said something that really doesn't -- it was outside the scope of what we discussed. I'm happy to live with that subject to the clarification in respect of the fire

PG&E Corporation and Pacific Gas and Electric Company victims' trust.

THE COURT: Okay. Mr. Bray. Thank you for your thorough argument. I appreciate the colloquy.

I'm going to move you out of the room now, if you don't take it personally. And --

MR. BRAY: No, Your Honor, not at all.

THE COURT: -- I'm going to ask my clerk to bring Mr. Mintz and Mr. Glassman in, and Mr. Schiff, if you're hearing me, you should raise your hand because you had asked -- yeah. Well, yeah. And bring Mr. Schiff in. Ms. Winthrop -- yeah, bring Ms. Winthrop in too. We'll get everybody. We're going to start with Mr. Schiff when he comes in here.

Okay, for each of you coming on to the panel -- Mr. Glassman, Mr. Mintz, Ms. Winthrop, Mr. Schiff -- just remind you to state your name for the record.

Let's start with Mr. Schiff, and then we'll go Mr. Mintz, Mr. Glassman, and then Ms. Winthrop in that order.

Mr. Schiff?

MR. SCHIFF: Okay. Thank you, Your Honor. Can you hear me, Your Honor?

THE COURT: Yes. I can.

MR. SCHIFF: Great. Thank you. David Schiff of Davis Polk and Wardwell on behalf of Citi. Thank you very much again for allowing us to speak briefly on this issue here.

Citi, Your Honor, is the administrative agent under

the utility revolving credit agreement. We filed a reservation of rights, not an objection, in connection with the plan, which was docketed at UCF 2360 (phonetic). We had asked to address the Court on this issue last week after Your Honor raised the specter of argument on this particular point because the debtors had included numerous agreements with Citi and its affiliates on the schedule of listed agreements and one of those agreements was the utility revolving credit agreement.

With respect to the credit agreement, we were concerned that given the breadth of paragraph 13 in the schedule of listed agreements that the language would be so broad as to conflict with language that was specifically negotiated in the plan of provisions for the protection of the funded debt trustees. We raised that with the debtors, Your Honor, and in response, the debtors, Friday night, filed an amendment to the assumed agreement schedule that removed that credit agreement as a proposed assumed contract, and we do not object to that modification, so to the extent that that's not changed further -- and I don't expect that it will be -- but to the extent that that's not changed further, it should resolve our issues with regard to the credit agreement.

I would mention, Your Honor, though that, again, we do have several other contracts that are still on the schedule of assumed agreements with the debtors, and I think that I thought that Mr. Bray stated the issues very well, and I don't intend

to rehash, but if you permit, I would just make a few brief points.

First, Your Honor, with respect to Section 502(e), which I understand I read from the confirmation brief and I think, as Mr. Bray said in his sur-reply the debtors are relying on as justification for the discharge of contingent indemnification plans. We just note that 502(e) by its terms is limited and the debtors say this -- the instances in which the claimant is co-liable with the debtors -- and I would note that customary indemnities in financial contracts in particular often go beyond that. They cover defense costs. They cover other matters for which there is no finding of liability. And so I think the reliance on Section 502(e) as a basis to discharge all contingent indemnification plans pre-petition is misplaced.

THE COURT: Did you hear my discussion with Mr. Bray about my hypothetical? My contingent claim of the money that I have to pay Mr. Karotkin and don't I have a mature claim against Mr. Bray?

MR. SCHIFF: No, but thank you, Your Honor. That was actually was the next point that I was hoping to visit. I thought that that example was helpful, in particular, because I think in your example, you had notice, as the creditors, the contract counterparty -- you had actually had notice that some event had occurred pre-petition or prior to confirmation --

prior to the cutoff of the indemnity that would have given rise and would have presumably given you the ability as part of a cure process to raise it. And that, I think, is an important point, maybe just of clarification, because as I read that paragraph 13 and as I read the plan, the debtors are actually saying it doesn't matter if you as the claimant -- as the counterparty that would potentially seek to exercise the indemnity -- it doesn't matter if you had knowledge or could have had knowledge that there was some lurking liability pre-petition. It's just if your indemnity looks back to periods pre-petition or maybe it's pre-confirmation -- but if your indemnity looks back to before the time when the debtors are seeking to cut off that right, then regardless of whether you had notice, if you could have known, if you could have raised it as part of the cure, because that sort of theoretically's the case, that right is cut off.

And I guess the concern would be, to modify your hypothetical, Your Honor, that, you know, let's say the plan is confirmed at the end of this month, and next month, someone goes to my client and says, something happened in 2017 and I would go after PG&E for this, but they're in bankruptcy and their plan was just confirmed, so here I am and I'm going to assert this claim against you. And I would look then to -- my client would look to its indemnity -- if it has a contractual indemnity that looks back to that period -- under the terms of

the agreement, it would first be getting notice of this issue in July 2020 and would be able to go back and look to the indemnity of the agreement at that point.

As I understand what the debtors are saying, what the debtors have proposed in the plan, there would be no lookback to essentially pre-petition conduct or pre-petition events whatsoever. That's how I understand the plan to be cabineting the time period that indemnification rights cover, is they have a cut off -- if it's pre-assumption, that right is just read out of the agreement. And the issue, Your Honor, is if you say, well, you have your cure process and you could make a cure objection, then that's your window of time to raise the issue, I'm just not sure how practically you could do that without having notice that this liability is lurking. And you could have a situation where frankly the debtors have notice that the liability's lurking, but the parties who's ultimately sued who's party to an assumed contract with the debtors doesn't have notice. And that's the issue I'm looking at.

THE COURT: Okay. Well, would you restate the same thing -- in your opening moment or two, you referenced paragraph 13, but I didn't get paragraph 13 of what.

MR. SCHIFF: Apologies, Your Honor. Paragraph 13 of the schedule of the schedule of assumed contracts. The other indemnification obligations provision.

THE COURT: So in the supplement, right?

MR. SCHIFF: In the supplement, yes. Yes.

THE COURT: Okay. All right. I got it. Thank you, Mr. Schiff. Appreciate your comments. We're going to take you out of the panel now. We don't need to keep you here.

MR. SCHIFF: Thank you, Your Honor.

THE COURT: I'm going to go -- Mr. Mintz, I think you had a hand up first.

MR. MINTZ: Thank you, Your Honor. Benjamin Mintz from Arnold & Porter, counsel for AT&T. I put my hand up in response to the agenda that Mr. Karotkin outlined. I'm not -- my issues, as I've alluded on a couple of the prior hearing dates relate to the trust documents, and as I've previewed with Your Honor, we've been working on trying to resolve those issues with the TCC and the trust -- and the trustee. We've taken it as far as we can and we have two issues that we need to bring to Your Honor's attention and have Your Honor determine. I know I'm kind of jumping in the middle of this other argument and I don't necessarily want to do it now, but I wanted to make sure with the opportunity to present those issues to Your Honor, and we can defer that to a later point in the agenda. I probably need about five to ten minutes to explain and describe the issues to Your Honor and argue the point.

THE COURT: Okay. Well, the agenda is very fluid because we --

MR. MINTZ: I understand.

THE COURT: -- it changes every five minutes. Let's defer it.

Ms. Winthrop, are you -- essentially, take your -- unmute and state your name.

MS. WINTHROP: Rebecca Winthrop on behalf of the Adventist Health claimants and we are on to echo Mr. Mintz' request.

THE COURT: But it's the same -- you're -- I mean, obviously, you're coming from the same point about that. Well --

MS. WINTHROP: Yes, Your Honor.

THE COURT: -- well, it seems to me that I need to involve the counsel for the TCC and for the trustee on this, so I don't even know if -- I know Mr. Julian, of course, was with us for now. I didn't -- I'm going to defer it. I just don't know when we're going to defer it so. Why don't I urge you to be in touch with both those counsel if you can and maybe we can figure out a time to deal with it. I don't know whether -- I mean, I really am trying to avoid setting yet another hearing. On the other hand, I can only take so many written briefs, so --

MR. MINTZ: Your Honor, we were prepared to do it on arguments. We're certainly happy to submit a writing if it would be helpful to Your Honor, but the issues are fairly

discrete, and we believe we could explain them to Your Honor in a brief presentation.

But again, we're certainly happy to do it in writing if that's Your Honor's --

THE COURT: Okay. Let's do this. You two have been very active. Your fellow counsel who participated in the motion, you know, three weeks -- or sharing the podium with you -- but you two have been more active recently. Why don't you just file something later today if possible and make -- and indicate -- well, I'll tell you what. Go one step further. Are you comfortable communicating with TCC and trustee's counsel to sharpen the point so you could just have a joint statement of what the issues are and then perhaps I could prepare a little bit ahead of time and either set a separate hearing later or not on -- just do something, but I need to get focused on the issues. So (indiscernible) --

MR. MINTZ: Your Honor, we've been in regular touch with the trustee and the TCC. We spoke with them about an hour before the hearing. We certainly could undertake that effort. We could also have them file the trust documents as they currently stand and highlight the provisions at issue because there have been other changes to the trust documents and it would probably be appropriate to put everything in context before --

THE COURT: Well, it's appropriate, but it just adds

to my total overwhelming load of trying to read things, and so if I get a hundred-page document and I have to read it to get two paragraphs of what the issue are, it's just more difficult. It's not that --

MR. MINTZ: I understand. We can frame this in a page or two as to what the issues are.

THE COURT: Yeah. See if you can both do that. If you can't do it, I'll figure out a way to come back to it. In terms of where we're going from, in the bigger picture, I've been working with my staff, and we're trying to put together a written document that identifies the open issues that need me to decide and perhaps just on another page identify the issues that have been resolved so that, for example, when I go back to the ruling that I made on the motion where you two were so active, we -- I clearly made a decision on some and I left some open. So it's helpful to go back to, okay, what's open, what are they going to -- what have they resolved on their own. It's not that I don't care. It's just that I can't absorb it all. So why don't you do that? Let's see if you can put together a brief statement that, I guess, the trustee's counsel's the principal party here, but to the extent that the TCC's counsel's involved, fine too.

Do what you can. If it needs to get more fully dealt with on the documents, I'm certainly not going to refuse the offer.

MR. MINTZ: No, I think we'll be able to do that, Your Honor.

THE COURT: Okay. Okay.

Ms. Winthrop? That's okay? All right. Thank you both. I'm going to, again, move you both out for now. Appreciate your effort.

MS. WINTHROP: Thank Your Honor.

THE COURT: Mr. Glassman, I thought -- well, okay. You tell me why you're back here today.

MR. GLASSMAN: Your Honor, it's on the 8.2(e) and other issues that are of interest to the municipal objectors, and we haven't spoken on that yet, so if this is the time -- if you have other issues you want to deal with first, I'll wait, but that's the reason. It's to address the issues.

THE COURT: Well, I don't see a hand raised at least by anyone like Mr. Pascuzzi or Mr. Gorton.

MR. GLASSMAN: I believe Mr. Gorton and Mr. Tredinnick may want to speak after I speak depending upon what's covered.

THE COURT: I see Mr. Gorton has now raised his hand. Wait a minute. Somebody has --

MR. GLASSMAN: Based upon my --

THE COURT: Somebody's talking to me for some reason. I don't know why. Okay.

Yeah. Mr. Tredinnick and Mr. Gorton. Okay. I'll come back to them. I see that.

MR. GLASSMAN: And you can bring them in at the same time now, if that's fine too.

THE COURT: Okay. Ms. Parada, bring Mr. Gorton and Mr. Tredinnick in please.

Mr. Gorton first and then Mr. Tredinnick --

MR. TREDINNICK: Mr. Gorton has allowed me to make the initial remarks.

THE COURT: I just want them to state -- both of them to state their appearances. That's all.

MR. GORTON: Thank you, Your Honor. Mark Gorton of Boutin Jones on behalf of the Northern California Power Agency, the Transmission Agency of Northern California, Sonoma Clean Power Authority, Valley Clean Energy Alliance, Redwood Coast Energy Authority, and the city of Santa Clara doing business as Silicon Valley Power. We refer to this group as the municipal objectors.

THE COURT: Thank you. Mr. Tredinnick?

MR. TREDINNICK: Thank Your Honor. Edward Tredinnick of Greene Radovsky Malone and Share and on behalf of the city and county of San Francisco.

THE COURT: Okay. One second. Give me one second. I'm trying to communicate with my staff at the same time. Okay. All right.

Mr. Glassman, you volunteered to be the (break in audio) person, so you're up.

MR. GLASSMAN: Yes. Good morning, Your Honor. Paul Glassman of Stradling Yocca Carlson and Rauth for the South San Joaquin Irrigation District.

Now some of the problematic plan discharge and release provisions have been dealt with, like 10.3 and 6.1, but others have not and I'd like to address the problems with 8.2(e) and also 10.9(f), and I'm going to talk for a moment about our view on assumption, and I'll come back and address a couple of points addressed in your colloquy with Mr. Bray to explain how it fits in with what I've said. But give me a moment.

The statement in 8.2(e) -- I'm going to talk about some of the specific language -- that assumption constitutes satisfaction and release of claims and causes of action arising under assumed executory contract. It effectively makes the provision a discharge and an improper one and 365 entitles the debtor to the assumption of an executory contract if it agrees to perform all of the obligations under the contract and cures any defaults as a condition to assumption. The section says nothing about claims. It only deals with contracts and defaults under contracts, so it shouldn't discharge or even affect claims unless they also happen to be defaults, and then only to the extent they are cured.

And Section 365 certainly should not discharge causes of action. So the debtor should get what they are -- we believe -- what they're entitled to under 365 and the language

in 8.2(e) would eviscerate the protections afforded to a counterparty.

Now you're going to -- let me explain now -- in that view, you would ask, what happens if an amount -- if there was an amount that was not asserted as a -- if the -- a counterparty did not assert -- if it wasn't discharged and then there was an amount that they did not raise, what would happen to it. And you said -- the -- you suggested, Your Honor, that it's really not a discharge issue perhaps, but a -- and I think -- an estoppel issue. So it would be taken care of because when a contract is assumed, we move from the world of bankruptcy law and claims into contracts and state law and defaults, and so there would be a -- if there was an attempt to assert that default later, it could be the -- the debtors could assert a waiver estoppel and that that could not be permitted.

But the problem with the treating -- the not treating -- I'm -- excuse me. The problem here in dealing with the claims issues is that the debtors take the position that -- because the contracts have these provisions in them that the claim arises at the time of the contract and it's a pre-petition claim discharged under 502(e) and that that -- but that would mean that post-assumption -- that post-assumption that the counterparty could not assert a right to payment, but we've all agreed that it should. The way to fix that from a conceptual standpoint is to take the -- is to eliminate the

claims upon assumption, and then you've moved into the area of assumption because there's a very big difference between the way these obligations are treated under state law and under an assumed contract and claims in bankruptcy.

The indemnity and contribution obligations are a claim in bankruptcy that the debtors say could be discharged, but what -- upon assumption, they become part of the contract, and then it's clear that if there's a triggering event later, that obligation can be enforced by the counterparty, and I believe that's the way it should work.

THE COURT: Well, okay --

MR. GLASSMAN: If the triggering event occurred first before bankruptcy, it would part of cure.

THE COURT: Well, Mr. Glassman, suppose after assumption, some events occur that give rise to an indemnity claim. Wouldn't that be assertible against the company? Against PG&E? If some event occurs after PG&E assumes the contract --

MR. GLASSMAN: Well --

THE COURT: -- (break in audio) it didn't even exist. If the facts didn't even exist, but whatever facts would give rise to an assertion of indemnity, why wouldn't -- who says they would be freed of that?

MR. GLASSMAN: Well, herein lies the rub, Your Honor. It's because it's -- you're right. They should be able to, but

as Mr. Schiff averted (sic) to, the problem is that the debtors take the position that if indemnity and contribution of a contractual nature is treated as a claim, as soon as the contract is executed, the possibility of -- that there could be a later event is in fair contemplation, and therefore, it should be discharged.

Their position, as I understand it, is that because it's a contractual indemnity and contribution obligation that are under the contract, it should be discharged, and this is a difference between the way contracts -- assumed contracts -- would be treated, and the way indemnity and contribution claims under a contract would be treated if, say, there was no assumption. There was a rejection.

THE COURT: Okay. I --

MR. GLASSMAN: You know, they say -- the debtors would say they were cut off -- they would be cut off and they couldn't be asserted is (break in audio) -- that's the issue. If the -- if we all agree that they can be asserted pre-petition when the event occurs on a contract, then I think that would solve a lot of the problems.

THE COURT: Well, let me rephrase my question. To hear you argue it, you're suggesting that if you look at the document, the contract that exists between the company and your client, then Mr. Karotkin wants to just tear out and strike from the document an indemnity provision that hasn't even been

triggered.

MR. GLASSMAN: That's exactly right.

THE COURT: Yeah. But I don't hear him making that argument. And what I'm hearing him say if a claim existed or -- you distinguish between claim and cause of action. To me, a cause of action is a claim. If a claim exists pre-petition, it's the counterparty's responsibility to assert it, and much like my hypothetical with Mr. Bray, if there's a dollar amount that isn't asserted, it's lost. Whether it's discharged as a bankruptcy or a state law matter, I'm not going to worry about. The utility -- or the company has no post-petition liability for what couldn't have been asserted pre-petition. But if the contract is still in existence and events happen in the future, post-petition, and then the counterparty has a right of indemnity, I don't believe that I'm hearing the debtor say that that's gone.

MR. GLASSMAN: We could ask Mr. Karotkin that right now.

THE COURT: No, well --

MR. GLASSMAN: At the moment. If you would like. Because everybody on this side of the table believes that's what's being argued and that's part of the --

THE COURT: Mr. Karotkin, that's a yes or no question. Is the indemnity obligation gone for events that occur post-assumption?

MR. KAROTKIN: Your Honor, I think you put your finger on it, like, a number of times. The issue is -- and it has to be determined in the context of an actual claim that arises. You can't address it in a vacuum. You have to look at the claim and make a determination. As you said, did the claim exist prior to the time the cure had to be made -- the demand for the cure had to be made. It takes into account the fair contemplation. It takes into account those issues. You can't have a blanket response.

I will tell you, if every single possible event happened post-assumption -- every single possible event -- you know, maybe under the -- probably under those circumstances, it would survive. But again, you have to look at each claim -- one thing's become perfectly clear from all of this discussion is that to make a blanket rule on any of these things doesn't make any sense. But what does make sense is if and when these claims -- and I'll argue this later -- if and when these claims ever arise -- and they may never arise -- then, Your Honor, you can look at them in the context of the facts and circumstances before you. And then make a determination, should they have been asserted in connection with your -- should they not have been asserted? Does 502(e) apply? Does it not apply? But to make blanket rulings that, you know, everyone seems to be arguing, is not appropriate.

MR. GLASSMAN: Mr. Karotkin -- if I may ask Mr.

Karotkin a question. So you are not arguing that under bankruptcy law, a -- that where there's a contractual indemnity that the claim arises at the time the contract was executed and therefore is a pre-petition claim in bankruptcy.

MR. KAROTKIN: I think I said what I --

MR. GLASSMAN: It's just a simple question.

MR. KAROTKIN: These are --

THE COURT: Mr. Glassman --

MR. KAROTKIN: I think I made quite clear my position.

THE COURT: Mr. Glassman, I'll put it a different way.

If there's a writing called a contract and that contract is between PG&E on the one hand and your client on the other and there's an assumption of that contract, Mr. Karotkin doesn't get to take his scissors and slice off out of the document the indemnity clause. What he does get to do, if some day in the future something happens and you assert an indemnity, he can go back and say, hey, guess what, you should have raised that before bankruptcy. And I believe if you could have raised it or it was contemplatable -- if -- to put it in bankruptcy words, if it existed as a claim -- not that it exists as a contractual term, but did a right of action exist -- he will probably win that argument, and if he can't make that argument, you will win the argument. And it's that simple. It's as though the contract gets rebooted on the petition date or the effective day, rather, and anything that

existed before should have been asserted. If it couldn't have been asserted because there's no claim, then it didn't need to be asserted, and that -- I'm almost telling you, that's how I would interpret the statute and rule -- or not statute. Excuse me. That's how I would apply this principle, and to the extent that Mr. Gorton or you or Tredinnick or Pascuzzi thinks that somehow Mr. Karotkin has pulled a fast one and he gets a blanket release of anything that happens in the future, he will not. And I don't think he's even asking to. It's fact-driven, and if the contract sat there on the shelf for five years and nobody even had anything come up but something came up on the morning after the effective date, you're protected. They're on the hook.

MR. GLASSMAN: That helps quite a bit, Your Honor. And we hope the language in the -- the final language will reflect that.

Let me move onto another issue you just raised that the cause of action is a claim, and unfortunately, it's not the case because cause of action -- and you were maybe talking about generic action --

THE COURT: The bankruptcy definition of claim in this document. See? That's by Bankruptcy Code.

MR. GLASSMAN: Okay. Yes. And -- but cause of actions are also cut off in 502(e) -- I'm sorry -- are cut off in 8.2(e) and cause of action has a very broad definition. I

lost the Court. Excuse me.

THE COURT: What? I'm sorry. What?

MR. GLASSMAN: I lost you -- your screen. So the cause of action has a very broad definition, way beyond the common understanding of cause of action and it cuts off all of these matters that are not even claims, like, before the other day I was talking about powers of eminent domain -- has powers, everything, and so these -- we're talking about whether claims could be cut off and questioned, but certainly things that are not claims should be cut off and cause of action has no business in this language and that's the point because it includes a multitude of matters that cannot be impacted by a plan. And I invite the Court to look at the definition of cause of action. I don't want to take the Court's time because many parties have argued it, but it goes on for half a page and it includes things like rights, powers, privileges, franchises, unknown claims and so forth.

THE COURT: Well, what are you --

MR. GLASSMAN: (Indiscernible) and et cetera.

THE COURT: Mr. Glassman, what are you reading? Are you reading the plan or the code?

MR. GLASSMAN: Oh no. I was just reading the definition of -- I was flipping to the definition of causes of action in 1.21 of the plan, if you were --

THE COURT: Look at 1.015 of the Bankruptcy Code.

Doesn't that include cause of action? It may not use the words, but it -- doesn't --

MR. GLASSMAN: Claim is liability on a claim. Right to payment.

THE COURT: Yeah, but not a (break in audio).

MR. GLASSMAN: This is (break in audio), but I invite the Court to look at the definition in 1.21 is -- it would include, for example, the -- we were -- as we were arguing, it would include powers of -- it might include powers of eminent domain. It includes many items that would not constitute -- I would argue would not constitute claims under the Bankruptcy Code and --

THE COURT: Okay. Mr. Karotkin --

MR. GLASSMAN: -- has no business in a discharge.

THE COURT: Mr. Karotkin told us the other day that eminent domain got solved. I thought that's a nonissue now. Isn't that right, Mr. --

MR. GLASSMAN: Well, yeah.

THE COURT: Eminent domain is no longer an issue, right?

MR. KAROTKIN: Yes, sir. In fact, it's in 1.13 at Mr. Glassman's request. I mean, I have to tell you his appetite is insatiable for changes to the plan. We've covered his legitimate arguments.

THE COURT: Okay. Don't --

MR. GLASSMAN: Well, with all due respect to Mr. Karotkin, I'm going to talk about all the different provisions we'd thought we'd addressed, like in 10.3, and you've got the same -- it's like whack a mole -- the same release provisions keep cropping up throughout the plan, so --

THE COURT: Okay.

MR. GLASSMAN: May I continue?

THE COURT: Time out. Time out one second. You can continue, but we've been going for two hours. I'm tired, and I want to take a midday break. I've also got some technical advice over the weekend that maybe my computer and maybe some of yours needs to take a break after a while and that that's causing some of these hang-ups. I don't know if that's true or not, but it may be a function of the process of speed or the RAM or something. I don't understand the technical of it, but I'd like to ask all three of you gentleman how much time you think you need to make your comments.

Mr. Glassman, how much time do you need -- more do you --

MR. GLASSMAN: I would say maybe ten minutes.

THE COURT: Mr. Tredinnick and Gorton? Are you letting him take the lead on this?

MR. GORTON: I'd -- sorry, Mr. Tredinnick. I'd like to have about two minutes, Your Honor, just to wrap.

THE COURT: Mr. Tredinnick, the same?

MR. TREDINNICK: Your Honor, yeah. Two minutes --

THE COURT: Okay.

MR. TREDINNICK: -- at the most.

THE COURT: I'm not going to -- all right. I'm going to take 10 plus 2 plus 2 equals 20. My math. And I'll try not to ask any more questions and I'll ask Mr. Karotkin not to also unless he wants to or I want to. And then we're going to take a midday break.

Go ahead, Mr. Glassman.

MR. GLASSMAN: So I -- on -- just to wrap up on the cause of action, I would ask the Court to review 1.21 and also in our papers, we got through all of the -- list a lot of the items that we believe should not be in there because they're not quite -- and so that's why ask that that language be deleted because it's a defined term that is extremely broad and it goes well beyond anything that properly be discharged in the plan.

And so in addition to the problems with the language in 8.2(e) -- of course, the plan supplement also has language that would eliminate the debtor's indemnity and contribution rights while allowing -- while requiring the counterparty to perform and we believe -- let me just ask. If the Court -- the Court indicated it wanted to take its break. I'm happy to take the break now and finish up afterwards and I'll make it even shorter.

THE COURT: No. I want to take a break --

MR. GLASSMAN: Okay.

THE COURT: We -- wait. Somebody's got a phone ringing.

MR. GLASSMAN: That's my phone. I apologize, Your Honor. That's --

THE COURT: Can you turn --

MR. GLASSMAN: -- it's the barking dog and the ringing the phone.

THE COURT: Okay, while we're waiting for Mr. Glassman's phone to stop ringing, I'm going to -- I've got a signal from my office that Mr. McKane from Calpine wanted to be heard also, and I think that's related to this, so as soon -- Mr. McKane, if you can hear me, when Mr. Glassman and Gorton and Tredinnick finish, I will bring you in and you'll be the final speaker for -- till the midday break.

So go ahead and finish, Mr. Glassman.

MR. GLASSMAN: Your Honor, so if the indemnification and contribution obligations in the plan were excised, then that would be an unfair burden on the counterparty, such as my client has numerous contracts with PG&E including interconnection agreements and easements and all of that as described in the declarations and exhibits that we submitted.

Now --

THE COURT: Okay. For what it's worth, and you know,

this isn't a final ruling, but you can take to the bank my interpretation of the law here. When a debtor assumes a contract, the contract is still in place -- if the debtor gets freed of is things that could have been translated into claims as defined in the Bankruptcy Code that existed at least pre-petition. I won't get into a speculation about the window between petition date and effective date. I don't know that we have to worry about that today.

And therefore, when you have something like an eminent domain entitlement that isn't affected, if you have a cause of action for eminent domain and you didn't assert it, then maybe that would be a different result. And the same is true with all these other things.

So that's just my interpretation. I will go back and review the provisions that you've cited me to, Mr. Glassman, that I don't believe that I would tolerate and frankly, I don't think the debtor is trying to cut out portions of a contractual relationship that it likes -- that it doesn't like and leave the good things in there. But I think it is entitled to get the benefit of -- be sappy and call it the fresh start, be legal and call it the DIPs charge, be technical and call it the ability to assume a contract and put the burden on the counterparty to claim or cry foul or claim -- assert a claim if there's something that should be part of the cure.

It's a little tougher question when it's noncurable.

I think I put to one of the counsel earlier in the hearing last week about a landlord who (break in audio) for something that's happened in the past that's not curable. That's a different issue. Go ahead.

MR. GLASSMAN: Thank you, Your Honor. So I want to turn now to Section 10.9(f), where the cause of action language is also in that provision. That's an injunction provision, Your Honor. And so my comments about the objectionable -- objections to cause of action would also apply to 10.9, which also lists -- not only does it say cause of action, but it lists a lot of the terms in the provision. This is 10.9(f).

But another problem with this section is that -- this injunction section, it says that the confirmation order enjoins the commencement or prosecution by any person or entity of any claims and causes of actions that are released or extirpated.

So the scope of the injunction, which applies to any party or entity, is broader than the scope of plan releases that apply only to releasing parties, for example, in the 10.9 -- the opt-in release. So creditors who did not even opt into the plan release would be swept within the language in 10.9(f). So I believe this provision, if it was not intended that way, it should be clarified so that a party who was -- is not enjoined, who wasn't -- who hadn't -- wasn't part of the release, is now somehow enjoined because of the -- the language doesn't match up.

It's similar to the problem that was raised on 10.9(e) by the I think the state agencies, where I think the language in one section doesn't match -- or the plan doesn't match up with another section. And so the injunction is broader -- is supposed to be intended to deal with releases, but the language is broader. It includes more parties, such as our -- my client.

THE COURT: Okay, got it.

MR. GLASSMAN: And that's why (indiscernible).

THE COURT: Thank you.

MR. GLASSMAN: And we can submit -- okay.

Then that is -- given the Court's comments on the cause of action, I'll wrap up before I close on the -- regarding the evidentiary objections raised by the debtors to our exhibits and declarations, I want to say that they're clearly relevant because they contain factual information regarding the pending legal actions and underlying administrative procedures to show there was a real controversy as to whether the plan applied to them.

We've talked about them, so I want the record to be clear on those claims. And the exhibits and the request for judicial notice or public records. They're not hearsay. The declarations simply describe and authenticate them and provide helpful context. And the declarations are also relevant on the executory contract issues that we've discussed. So I would ask

that the objections be overruled and the exhibits be admitted into evidence.

And I can give you the numbers of -- the docket numbers if you would like --

THE COURT: You don't need to. You don't need to. I'm aware of them.

MR. GLASSMAN: Okay. And that -- that's -- then I'm done, Your Honor.

THE COURT: All right, thank you Mr. Glassman.

Mr. Gorton?

MR. GORTON: Thank you. Thank you, Your Honor. Appreciate the opportunity to close, if you will.

The municipal objectors have multiple contracts with PG&E related to highly regulated and complex (break in audio). Their objections have not been designed to impede the recovery by the nonconsensual wildfire victims, but are intended to protect the municipal objectors and their long-term relationships from being subjected to the preclusive effect of a confirmed plan that includes provisions exceeding what is authorized under the code concerning discharge, release and interpretation.

To a large extent, those objections and those of the federal and state agencies and our local government allies, city of -- county of San Francisco, the South San Joaquin Irrigation District, the city of American Canyon, and the

Feather River Water District have been successful in prompting the proponents in the necessary plan amendments, subject to, of course, these final arguments that Mr. Bray, Mr. Pascuzzi, Mr. Troy, and Mr. Glassman, perhaps Mr. Tredinnick have that need to be resolved.

With regard to the specific and separate supplemental objections by the city of Santa Clara concerning its Grizzly hydroelectric plant, PG&E has advised us that the FERC-approved agreement is not an executory contract, which we have a difficult time understanding. But we are working with PG&E now (indiscernible) the mechanism for resolving those issues and our objection in that regard, for the specific objection for the city of Santa Clara is not an impediment to confirmation.

In conclusion --

THE COURT: And I take it as any objection by Santa Clara is simply treated as withdrawn?

MR. GORTON: With regard to that supplemental objection about the treatment of the executory contract and the deletion from the schedule.

THE COURT: Okay, okay.

MR. GORTON: We're looking at that and it's not an impediment to confirmation.

THE COURT: Okay.

MR. GORTON: In conclusion, Your Honor, the classes of wildfire victims who have accepted this plan deserve their

compensation. And all creditors, including the municipal objectors and their allies, deserve a plan that affects them no more than the law allows. Thank you.

THE COURT: Thank you, Mr. Gorton.

Wait one second Mr. Tredinnick. I've got to look at a message here.

Okay, Mr. Tredinnick?

MR. TREDINNICK: Thank you, Your Honor. On behalf of the city and county of San Francisco, I -- which has many relationships with PG&E, including many indemnity and contribution issues, I just want to mirror the comments that have been made today. I'm not going to go into and repeat them. They've been made on several occasions.

We also believe that the provisions of 8.2(e) that were detailed by Mr. Pascuzzi and Mr. Troy last week were well-taken and we would encourage the Court to take a look at those, as far as resolving the issues that have been raised.

As to the other objections that we have -- that we had raised, the remainder of those have been resolved by the debtors through their amendments to the plan that were made last week. So the city would just submit its objections in joining with the other parties that have raised the objections to the indemnity contribution issues and the issues in 8.2(e). And thank you, Your Honor, for your assistance in getting this thing done. Thank you.

THE COURT: Okay, thank you, Mr. Tredinnick.

MR. TREDINNICK: Thank you.

THE COURT: I'm going to let Mr. McKane come in.

Ms. Parada, would you please remove the other three speakers? I'm going to fix my robe here that's coming undone here.

And so Mr. Glassman, thank you.

MR. GLASSMAN: Thank you, Your Honor.

THE COURT: Mr. Gorton, thank you.

Mr. McKane, would you please state your name for the record?

MR. MCKANE: I believe it's still morning, Your Honor. Good morning, Mark McKane of Kirkland & Ellis for Calpine Corporation.

THE COURT: Okay. You've been patient. You're on.

MR. MCKANE: Thank you, Your Honor. And I recognize that Calpine has not needed to rise much with regards to these cases. And that's in part because Calpine has worked very hard with the debtors to have their contracts assumed. Calpine has dozens of contracts, our purchase agreements, and others with PG&E.

We did file an objection, a limited objection, to the plan at 7214. I did file a notice of speaking attorneys at 7489. I had asked for a few minutes. And really, what this comes down to is the issue that's been brewing today that we

thought was resolved on Thursday, when we heard Mr. Karotkin say on the record for assumed executory contracts, contribution and indemnity claims will be assumed in their entirety.

And if that is the statement that goes into the plan and the order, that is all the revisions that we think are necessary. We think some of the stuff in the plan and specifically in the order would need to come out to give that full effect. And I'll file a --

THE COURT: Mr. McKane, were you able to review what was filed yesterday?

MR. MCKANE: Your Honor, what I've seen -- I have reviewed parts of what was done yesterday. I think the problems still arise in three areas. 8.2(e), which you've already heard about. And I actually think Mr. Troy was very succinct about this in his argument on Thursday, where he flagged that if 8.2(e) was limited to defaults, it would address the issue that you have been raising in your hypothetical.

All of your hypotheticals with regard to the exchange with Mr. Bray about the thousand dollars, if we tied assumption of contracts to defaults, capital D as used in the plan and as used in the code, as opposed to bringing in the concept of claims, that would be fine. Because what's causing people heartburn is this concept of does the scope of a claim include a contingent claim such that there could be a situation where

an indemnity is cut off before the underlying claim is crystalized.

And this is not a hypothetical concern with regards to Calpine, Your Honor. And I will give you a very specific example. There are indemnity obligations with regards -- between Calpine and PG&E as it relates to transactions that have occurred up in Sonoma and Lake County in the area of the Kincade fire.

The Kincade fire in this case has been decided to ride through. And under no circumstance could there be a scenario in which Calpine's contracts are assumed but somehow, under a function of the plan, an indemnity right was being cut off before the claims that are going to be adjudicated by victims of the Kincade fire are resolved. And that is a real issue here, Your Honor. This is not just a hypothetical concern.

THE COURT: Well, Mr. McKane, I'm a great fan of hypotheticals. If the Kincade fire was caused by an individual and that individual filed Chapter 7 today, would you have a basis to assert that the claim was not-dischargeable?

Let's assume the underlying entitlement. Let's say the individual, you know, you could make a case for arson. Would it be dischargeable or not? In other words, didn't -- is it something that was known or knowable, that the facts would give you or the victim reason to believe it should assert a claim?

MR. MCKANE: Your Honor, I --

THE COURT: Excuse me, I misstated. Forget dischargeable or not. Would you have a claim? The individual files Chapter 7 and the trustee has a small amount of money to distribute. Do you have a claim that you could assert in that person's bankruptcy?

MR. MCKANE: It's a challenging question, Your Honor, because I don't think the work has been done by the investigators and made public sufficient to know whether anyone in Calpine's circumstance or PG&E's circumstance of any other victims of that fire, whether there has been enough causation determined as to what would happen.

I -- Calpine, because it is a careful corporation, may file a protective claim, recognizing a Chapter 7 -- you know, may not yield much recovery. But we don't know enough about that fire, because the investigations aren't done yet. It really comes down to the notice issues that you've been flagging about before. And your notice concern, Your Honor, can be addressed in the concept of default, not in the concept of claim. And that's really --

THE COURT: But that's not default. But that's -- that's not a default. In other words, I understand in my hypothetical it's not a contractual relationship. But the point is, you know there was a fire. You know that the defendant may be culpable. And you've got two choices: file a

claim or not.

MR. MCKANE: Right. Here --

THE COURT: And the safer thing is to file a claim, because if --

MR. MCKANE: And Your Honor, think about it here in this scenario with Calpine? With regards to the cure obligations to PG&E, we may come forward and say to, as part of our cure, what about Kincade? How are we going to address Kincade? You've agreed to assume all of our contracts. We've put -- we've filed proofs of claim. We've filed administrative proofs of claim, or protective rights there. How are you going to treat us with regards to Kincade, because we do not know, but we may suspect that you are the cause of that fire?

And in that scenario, what is PG&E going to do? Are we going to have a cure estimation proceeding to determine what rights I may have that are contingent on an indemnity obligation? That can't be the law. That's where the intersection between an indemnity obligation and a 365 doesn't match up with 502.

And what they're trying to hang their hat on, Your Honor, is 502(e). And there is no intersection between 365 and 502, other than in the rejection context. It's only in 502(g), in the rejection context that we get into the discussion of what is a claim. And that's ultimately the conflating of principles that we have a concern with here.

Their arguments that they want to make about notice and curing and default, that all rests within -- they have all their rights under 365. There is no case law that we have been able to find, that the UCC was able to find in their surreply that connects 562(e) to an assumed contract.

And Your Honor, the only case law that we've been able to identify says the exact opposite. And that is the in re G-I Holdings case from the bankruptcy court in New Jersey, 580 B.R. 388 at 420, 421. And Your Honor, this was cited by the UCC in their surreply. We found the same case. And in that scenario, a debtor tried to do exactly what PG&E's trying to do here, which is assume the contracts, but leave behind some kind of contingent indemnity obligations.

The bankruptcy court punted it to a state court and then the subsequent state court said absolutely not, that you assume a contract as whole, as we all have learned in Noel (phonetic). And that when those indemnity obligations crystalized post-effective date, because the debtor had assumed the contract, even if there was some contingent obligation prior, it crystalized post-petition and the debtor had an obligation. It could not rely on res judicata or collateral estoppel from a confirmation order to cut off that right. And that is what we're saying here.

They've come forward with no law to support it. 502 doesn't work on its face and the only case law that we're aware

of goes against that. And so, what we're trying to say is rely on 365. Everyone's on notice on how to cure. If there's an argument down the road, maybe it comes back to Your Honor. But it's not a 502(e) issue. There's no case law that supports it. And I think Mr. Bray has a legitimate point and it actually comes to a comment that you had said earlier today. And I think that -- excuse me, Mr. Karotkin said earlier today, which is the plan's not the proper procedure to raise these issues.

As they crystalize, if they ever do crystalize, we -- the counterparty will work it out with the debtor. And if they can't work it out with the debtor, we're probably coming back to Your Honor for an interpretation. But the procedure that they're putting forward is inappropriate.

THE COURT: Okay.

MR. MCKANE: And so with that, I have -- apologies, Your Honor.

THE COURT: I appreciate your comments, Mr. McKane. That's (indiscernible).

MR. MCKANE: Yes. I would just have one thing, just specifically with regards to -- I haven't seen Mr. Bray's proposed corrections to the order, but I would say that the easiest way to cut through this from a contract counterparties perspective is to strike paragraph 37 of the proposed confirmation order. And then specifically, there is a section, paragraph 43, with regards to energy procurement contracts.

Calpine obviously is one of the major counterparties there. And all you would need to do to make this absolutely clear would be to add the word indemnity obligations in the second sentence in front of setoff and recouping rights.

And that's it, Your Honor. Those are all my remarks. I thank you for your time.

THE COURT: Thank you, Mr. McKane. I appreciate it. We're going to take you out of the panel right now.

Hold on one second, Mr. Karotkin. I'm going to give you a break, too. All right. Well, there are some names on the hand raise that I don't recognize and I'm not going to identify them today. I'm going to stick with our plan and take a mid-day break.

Mr. Karotkin, you and Mr. Johnston are next up, you think? Or do you anticipate anybody else that you know of once we're here, because I don't -- oh, you know what, it looks like I -- let me -- I do have a message to my clerk that a number of people also want to be heard on this UCC issue from Mr. Lubic, Mr. Winsberg, Newman.

How about you, have you heard from anybody, Mr. Karotkin?

MR. KAROTKIN: I received -- I think I received a copy of the same email that Ms. Parada received on that and --

THE COURT: Okay.

MR. KAROTKIN: I believe they had sent us emails last

week about this, that they did want some time.

THE COURT: What -- but when -- what's -- let's hold that for a moment. Am I correct, then, that you and Mr. Johnston wanted essentially to make a closing argument for matters --

MR. KAROTKIN: Yes, Mr. Johnston is going to address the PERA, the response to the PERA objection. And I intended to address the UCC and the other parties' objections, with respect to the issue we're discussing now. And some of the remaining objections, which I think are quite few, some of which were raised in connection with the UCC, with respect to certain progress of the proposed order, including 8.2(e) and 10. --

THE COURT: Yeah, one person that I was scheduled or anticipating hearing from, who I don't know -- I don't know where we are on that, maybe he's listening, but I'm drawing a blank. The trustee -- the fire victim trustee's counsel. I believe it's Mr. Molton (phonetic). Mr. Molton, if you're in the audience, would you just raise your hand so I know that you're out there hearing my comments?

Okay, well I don't see him at the moment. All right, let me do this, I am going to take a break, but I'm going to take a whole hour. How risky of me? Again, these are very long days to keep track of everybody, so I'm going to resume at 1 o'clock San Francisco time.

I'm going to do my best to hear from the small group of people who have contacted my law clerk or my court deputy. And Mr. McDonald, if you are interested in being heard, you need to send an email to my courtroom deputy as to what it is you wanted to be heard about in the next little while, because I may choose not to call on you.

And I do see from my courtroom deputy Mr. Molton -- I misspoke his name, Mr. Molton is in the audience. Mr. Molton, I don't see you raising your hand, but I'm assuming that it would be helpful to have you speak.

So here's what I'm going to do. Sometime before 1 o'clock I will review any requests that come in from other persons, like the person I just named, to my courtroom deputy. And I'll make a decision whether to call on that person or not.

My expectation -- well, then I will also look at the parties who asked to be heard that I just named, Mr. Lubic and the others, send Ms. Parada your estimated time request and I will make my best judgment on it.

Mr. Karotkin, I'll assume you and Mr. Johnston will come after I hear from those folks. And if Mr. Molton wishes to be heard, I'll probably take him ahead of you and Mr. Johnston. From my point of view, you and Mr. Johnston are the closing act for today. And --

MR. KAROTKIN: Okay, so I just would note that for purposes of my closing act, I believe Mr. Bennett and Mr.

Tsekerides would like to be added to the panel, as well.

THE COURT: Okay. Okay. My guess is that we'll be doing that somewhere around 1:30 our time. I'm not going to be -- it's simply not going to take a lot of time for the people that want to get in. But I am going to take the break for what I said for a number of reasons. So I will be on -- see you all back in the virtual courtroom at 1 o'clock San Francisco time.

Thank you for your time. Thank you to the staff.

MR. MCKANE: Thank you, sir.

THE COURT: All right.

(Recess from 12:00 p.m., until 1:00 p.m.)

THE CLERK: Okay, we're recording now, Your Honor.

THE COURT: All right. We're resuming our hearing. It's 1 o'clock San Francisco time. A couple of announcements, I'm going to call on the following speakers in order: Mr. Hugh McDonald, Mr. Lubic, Mr. Wersberg -- Wes -- Winsberg, excuse me, and Mr. Heaton. I'm going to expect that the four of you can make your presentations in an aggregate of no more than thirty minutes. I just can't take more time than that.

Mr. Abrams has filed something and previously raised his hand. I am not going to be able to call on Mr. Abrams. He filed something in response to the debtors filing of the plan, another version of the plan yesterday. He can file whatever he wants, but it's not an action item and I don't intend to call

on him. I'm aware of the filing.

And Ms. McDonald, not Mr. McDonald, but Ms. McDonald had previously filed something in the form of a request and she wants information about Judge Donato and the hearing before him. I'm not going to call on Ms. McDonald. I know nothing about what's going on in Judge Donato's court. And if she wants to find out from others who are appearing in that court, there are other attorneys who have filed things recently, including Mr. Hallisey. She might consider contacting them. But there's nothing I can do to help her.

So with that, I'll bring Mr. McDonald in.

THE CLERK: Your Honor, Sam Newman with McKinsey, Inc. has also raised a hand.

THE COURT: Mr. Newman was someone who had asked also. So I'll call on him after Mr. Heaton.

So it's Hugh McDonald, Lubic, Winsberg, Heaton, Newman. And those are the last ones I'm going to call on.

And Mr. Molton, you previously notified my courtroom deputy that you were satisfied with some information you heard on the record with counsel for the other claimants. You need to raise your hand only if there's something you want to be heard on today. I've got the message about something you're going to submit. So if you take your hand down, I won't expect you to give any other report. I thought perhaps you would want to do a status report. Okay.

Ms. Parada, let's proceed.

THE CLERK: One moment while I bring Mr. McDonald in.

THE COURT: And Mr. McDonald, Mr. Lubic, Mr. Winsberg, Mr. Heaton, Mr. Newman, I'll remind you each, too, when you are on the screen and your mic is activated, then state your name for the record.

Mr. McDonald, good afternoon.

MR. MCDONALD: Can you hear me -- can you hear me, Your Honor?

THE COURT: I can. So please state your name and let's -- welcome.

MR. MCDONALD: Thank you, Your Honor. Hugh McDonald, Troutman Sanders, here on behalf of Consolidated Edison Development. Thank you for the opportunity to briefly address the Court on the issues that have been addressed by Mr. Bray and Mr. McKane.

Your Honor, I rise because of concern and some of the comments that have been made thus far in these discussions. Consolidated Edison Development, through its affiliates, has sixteen projects with PG&E and supplies 665 megawatts of renewable energy to PG&E. Con Edison is a counterparty to both power purchase agreements and interconnection agreements with PG&E.

It seems, Your Honor, we started this case with PPA controversies and it looks like we potentially are ending this

case with PPA controversies. And I don't want to go back over the prior issues we dealt with at the very outset of this case. What I would like to do is point out two points of concern that we have with respect to the provisions related to the indemnity and the assumption of executory contracts.

In particular, Your Honor, the interconnection agreements that Con Ed and many of the other energy providers are parties to -- with PG&E also involve the California ISO. They are tripartite agreements. And indeed, these agreements are part of PG&E's approved (indiscernible).

In fact, the very indemnification provisions we are discussing here have been approved specifically by FERC orders for inclusion in both small and large generation interconnection agreements. Those are --

THE COURT: All right. Excuse me, they've been approved by whom?

MR. MCDONALD: FERC, Your Honor.

THE COURT: Okay.

MR. MCDONALD: In FERC orders 2003 and 2006. I think as Mr. Bray noted and cited to the Frontier Properties case, the debtor can't cherry-pick the provisions it wants to assume as part of the assumption of an agreement. The agreement itself must ride through the bankruptcy in effect and must be performed in full, on a go-forward basis, as if the bankruptcy didn't happen.

By allowing PG&E to shed what would be a potential unknown pre-petition indemnity claims through this process, PG&E would be effectuating a nonconsensual modification both its power purchase agreements and its interconnection agreements.

Indeed, Your Honor, the CPUC approved the very PPAs that we are dealing with. And the interconnection agreements are FERC jurisdictional contracts. Unlike the assumption or rejection issue we dealt with with Your Honor at the outset of these proceedings, this is an attempt to modify a provision by cutting off liability for potentially unknown conditions or claims that may exist without having to go into a proper regulatory proceeding.

As Your Honor is aware, the PUC has approved PG&E's plan and it found that it complied with AB 1054's requirement that the plan be consistent with California's renewable energy goals. And this was premised, Your Honor, on PG&E's assumption of all of this renewable energy contract. PG&E represented to the PUC that it was, in fact, assuming all energy-related contracts. It did not differentiate on any of the provisions or saying it was not going to perform all of its obligations underneath those contracts.

The nonconsensual modification of a FERC or PUC contract -- regulated contract -- requires their approval before those modifications can be effective.

THE COURT: Did PG&E take any position before the commission that's contrary or inconsistent with the position that's -- you're arguing here?

MR. MCDONALD: No, Your Honor. The only position PG&E took before the commission was that it was satisfying the AB 1054 requirement through the assumption of all of its renewable energy contracts. And yet, the plan itself states that they are assuming that all the renewable energy contracts are deemed assumed.

THE COURT: Well, what I'm saying is did they make any statement to CPUC that says we're assuming it, but we're actually rejecting some of these indemnity provisions of the contract?

MR. MCDONALD: Your Honor, I listened to all of the PUC proceedings and I never heard a statement to that effect from PG&E to the commissioner.

THE COURT: Okay.

MR. MCDONALD: Your Honor, the (indiscernible) that was advocated by Mr. McKane to paragraph 43 I think works. By including the indemnity provisions in that, it'll demonstrate that PG&E is, in fact, not seeking to have a nonconsensual modification of either a FERC or PUC jurisdictional contract. Otherwise, Your Honor, the parties will have to seek some determination from the appropriate regulatory authorities at some point, seeking appropriate relief from Your Honor,

obviously, first that the provisions of the plan in fact do not effectuate a modification of those indemnity obligations.

Frankly, Your Honor, we don't know what claims exist. But the purpose of the assumption, I think as you heard from both Mr. Schiff and Mr. McKane and Mr. Bray, is that you don't have to go out and hunt down and figure out every potential contingent claim.

Once, and it is clear from the Frontier Properties case, which is the leading precedent in the circuit, PG&E must perform these PPAs and interconnection agreements as if this bankruptcy never occurred. In order to do so, they should not be able to modify their indemnification obligations as part of a plan.

THE COURT: Mr. McDonald, hold that thought for a minute.

Ms. Parada, bring Mr. Karotkin in.

Mr. Karotkin raised his hand. Maybe he's going to solve the problem for us, Mr. McDonald. Stay tuned.

MR. KAROTKIN: I'm sorry, Your Honor. I raised my hand because I was having a hard time getting in at the outset, so I apologize.

THE COURT: Actually, I -- it was my fault. I told Ms. Parada she didn't need to bring you in. I didn't think you wanted to be in.

MR. KAROTKIN: Oh, okay.

THE COURT: Here you are.

MR. KAROTKIN: Maybe I should leave.

THE COURT: Well, do you want to respond to something Mr. McDonald said?

MR. KAROTKIN: I'm happy to respond. I think that first of all, a couple of things. Number one, what Mr. McDonald -- the last thing that Mr. McDonald said is actually wrong and not the law. And I think Your Honor, you stated that quite clearly before. You don't get a free pass. You don't get a free pass on an assumption. And if there are cure amounts that have to be asserted, they have to be asserted. I think that's clearly the law. That was addressed in the Arriva Pharmaceuticals case, in fact, coming out of your court, not you, Your Honor, one of your colleagues.

And again, what Mr. McDonald is saying is the same thing that everybody else is saying, that let's address these claims if and when they arise in the context of the facts. And it may be that we have no dispute with Mr. McDonald. It may be that we have no dispute with Mr. Kane (sic). It may be that this will all just go away.

But what these people are asking for, and Mr. Bray is asking for, is a blanket pass, a totally blanket pass for everybody, that, with respect to an assumed executory contract, you don't have to comply with -- what Your Honor said, that you don't have to comply with the Arriva Pharmaceuticals case and

that everything passes through, no matter what. Whether you should've thought of it or not, it all passes through. And that's just not the law.

Let everybody -- if this -- again, if it ever happens, we can address the claims when they arise. But it's not appropriate today for this court to say no matter what, people get a free pass. That's not the law. If we don't have rights under 502, we don't have rights. But let's address it in the context of a claim that actually arises if it ever arises. That's what we're saying.

THE COURT: Well, you're saying what you said before. That's fine.

Mr. McDonald, do you want to add anything further? I mean, I think it -- it's the same --

MR. MCDONALD: Yes, Your Honor. Briefly, I understand Mr. Karotkin's position. We have two -- and I know Your Honor has addressed and Mr. Karotkin has been addressing it. There's a difference between unknown claims or conditions that may exist, for example, in one of the areas where there's an interconnection situation versus a known-extent claim.

What Karotkin is talking about in the cure process are extent-known claims. What we are saying is to the extent there are any conditions or any claims that are unknown to us, that they can't possibly be resolved through the cure process. How do you estimate or deal with facts you don't even know exist?

THE COURT: Okay, but it seems to be the flip side, Mr. McDonald, is if there is a known claim, then you ought to do something, agreed?

MR. MCDONALD: And we have. Yes, Your Honor. We have entered into an arrangement with the debtor. We have incorporated it into the confirmation order to work out our differences and our claims through a process to get to the right cure amount.

THE COURT: Okay.

MR. MCDONALD: Our problem is the modification and cutoff of an indemnification claim, which is inconsistent with the Frontier Properties case --

THE COURT: Okay, I --

MR. MCDONALD: -- but also inconsistent with FERC and PUC jurisdictional requirements.

THE COURT: Okay. I got it.

MR. MCDONALD: These are different contracts, Your Honor, the bottom line, than what Mr. Karotkin may be trying to address through this provision. But if the plan contains, and the confirmation order contains, a blanket provision disallowing these claims, which it currently does -- which I would also note is procedurally improper -- because there hasn't been any claim allowance process at all. It's just a disallowance of these claims. That is improper, Your Honor.

THE COURT: Okay. I got it. Thank you, Mr. McDonald.

Thank you.

MR. MCDONALD: Your Honor, thanks for the opportunity.

THE COURT: Okay, thank you.

MR. MCDONALD: Thank you.

THE COURT: Ms. Parada, go ahead and -- now Mr. Karotkin, if you want to stay on duty here, while the others come in or -- I don't need to have you come back and forth on the same argument.

MR. KAROTKIN: I'm happy to stay in.

THE COURT: Okay, thanks.

So we're going to go to Mr. Lubic next.

And Mr. Lubic, state your name for the record, please?

MR. LUBIC: Very good, Your Honor. Michael Lubic of K and L Gates for CN Utility Consulting, Cupertino Electric, and Wright Tree Service of the West. And we're addressing the objections that we filed as docket numbers 7330, 7333, and 7336.

THE COURT: Okay.

MR. LUBIC: So the Court knows that there's lots of stuff that goes on behind the scenes. And I just wanted to let you know that there is a large group of vendors, probably about twenty, that has been loosely coordinating with respect to issues that are important to them. And one of the salutary effects of that is then you don't have twenty people asking to speak on these issues.

My clients are safety and reliability service providers. They provide critical services that keep the system operating. They're not large public companies with significant resources and access to the capital markets. Wright Tree Service is an employee-owned company based in West Des Moines, Iowa. So we're a little different than some of the other creditors and speakers in this case.

We thought that there was a settlement put on the record last Thursday, which resolved all of our issues. And we waited patiently for language to be filed and language was not filed. And late yesterday, we were told that the committee and the debtor couldn't reach an agreement.

This is very concerning to us, because the settlement that was put on the record was very simple. And the language that could be used to address the settlement should be very simple to draft. You know, we think it could be a couple of sentences that resolves all of these issues.

And I can tell you that these large vendor group, having read the plan and having been told that we're unimpaired, and on the other hand seeing lots and lots of complicated provisions with complicated legalese, may have created some ambiguities and some concerns. And I'm not here to argue about those provisions, but those provisions include without limitation, because these are scattered throughout the plan, 4.23, 8.2(e), 10.3, 10.6, 10.7, and buried in the 2,000-

page plan, supplement in the -- what we call the cure notice, various provisions, including paragraph 13.

There's just a lot of stuff there that smart lawyers can use to make different arguments. And this plan should not be about who can squeeze their interpretation of what it was meant to their best interest. We need a plan that is clear and unambiguous, and we don't want to spend a lot of time and money and this Court's time fighting about what the plan says and what it actually meant. So --

THE COURT: Did you see the plan from yesterday that was filed?

MR. LUBIC: I did, and I looked at the redline, and it doesn't address any of these issues --

THE COURT: Okay.

MR. LUBIC: -- as far as language.

THE COURT: Would you like to propose the two-sentence fix and put something on the docket that Mr. Karotkin and I can look at this evening or tomorrow?

MR. LUBIC: What we would like to do is wait and see what the committee files. And if we can figure out a more elegant way to say it, or if our issue is perhaps maybe different, we will put something on the docket, and it will be no more than two pages.

THE COURT: Well, but make it -- I mean, you got to act quickly. We're moving on a very fast track here.

MR. LUBIC: Understood, Your Honor.

THE COURT: Okay.

MR. LUBIC: We will try and file something before tomorrow morning.

THE COURT: Okay, good. Thank you very much, Mr. Lubic.

MR. LUBIC: So -- wait, but we have four issues --

THE COURT: Okay.

MR. LUBIC: -- that I just want to be clear about because these are the things that the vendors believe we need clarity on.

Number one, should not be controversial. The assignment of the claims to the TCC is subject to all defenses and rights. And the vendors, in defending those claims, can raise any argument that they could have made against the debtor. That should not be controversial. That should not be complicated to draft.

Number two, the executory contracts are assumed without modification. We obviously need to deal with the cure issue because, as the Court has pointed out in its hypotheticals, if there is a default, and a creditor wants that default cured, it needs to file something. My clients filed something. I'm less concerned about that. But the idea that we can address these claims as they arise works fine, as long as the debtor can't say, oh, but the plan actually changed

these things.

Number 3, claims not related to assumed contracts need to be preserved and dealt with in the claim process. Pretty straightforward. And number 4 --

THE COURT: I mean, why do you even raise that? I mean, why is that even controversial?

MR. LUBIC: We do not have transparency into why the debtor and the committee could not agree on language to resolve that issue. And we do not understand why it is controversial.

THE COURT: Well, I guess I'm -- hold on, there's an airplane going by. One second. We actually have airplanes flying today.

I guess I don't understand why it even is something that needs to be dealt with. I mean, if there's a claim that hasn't been at all involved with an executory contract, it seems to me that the consequences follow automatically. You file a claim, or you don't, right?

MR. LUBIC: Well, yes, except for all of this language in the plan that gives rise to arguments that maybe that's not the case. We just want clarity on the issue.

THE COURT: Okay, that --

MR. LUBIC: And the --

THE COURT: -- that will be included in your two-sentence fix, or --

MR. LUBIC: Absolutely, absolutely. My two sentences

PG&E Corporation and Pacific Gas and Electric Company

are going to cover all four of these issues.

THE COURT: You know, I took Latin in high school, and the Latin scholars could make one sentence go for about four pages. So be careful.

MR. LUBIC: There may be some numbered clauses in the sentence. But the sentence is going to start with, notwithstanding anything to the contrary in the plan and the confirmation order: one, two, three, four.

The fourth issue is carving out from the definition of fire claim, claims that vendors might have back against PG&E, arising out of their relationship. Because if you read through the fire claim definition, it's arguably a fire claim, which gets tryouts in the trust, which can't possibly be what anyone wants. But that definitely needs clarification. So those are our four issues, and we will -- unless we agree completely with what the UCC files, we'll file some proposed language.

THE COURT: Okay. Thank you very much, Mr. Lubic. I appreciate your comments. All right, we're going to take you out of the hearing room now. Thank you.

And we have Mr. Winsberg next, and then Mr. Heaton.

Mr. Winsberg, can you hear me?

MR. WINSBERG: Yes. Can you hear me, Your Honor?

THE COURT: Yes, I can. Please state your name for the record.

MR. WINSBERG: Thank you -- thank you, Your Honor.

Harris Winsberg from Troutman Sanders on behalf of Osmose Utilities Services.

Your Honor, thank you for the time today. I'll be brief. Osmose, like several other parties that have spoken, including Mr. Lubic, have been during contractor of PG&E and is unimpaired under the plan. I'm not going to repeat the arguments on the executory contracts and indemnity and contribution claims. I think those have been already articulated. I would just urge Your Honor to look at 365 and the use of the term "default" and not claim it's part of the cure process.

Your Honor, Mr. Lubic, I echo his comments -- and I'll just be brief on this -- that under the TCC trust, there'll be a signed rights and causes of action being transferred to the trust. But the plan is unclear as to the preservation of vendors' and contractors' ability to assert all rights and defenses that they would have to any such litigation.

And while the debtor, in their brief, as Mr. Bray talked about earlier today, mentioned that those rights were being preserved -- and that can be found in their brief on pages 63 and then 69 -- they didn't point to any provision in the plan or confirmation order that reflects that. And so now, we're almost -- we're getting close to the end of confirmation, and we're concerned that there needs to be specific language in the confirmation or in the plan that whatever defenses and

rights that people have, those right through against any claims that may be brought by the trust.

And it's not simply an esoteric issue, Your Honor. For example, in the TCC and the assigned rights and claims, one of the new things -- and it's at docket number 7711-1 -- according to the --

THE COURT: Say the number again, please?

MR. WINSBERG: I'm sorry, Your Honor. It's 7711-1. One of the things that's added in there is potential claims for fraudulent conveyance. And so I don't understand how you could have a claim for fraudulent conveyance with the solvent debtor; but putting that aside, any defendant to a claim like that would have a right to assert a claim under 502(h). And of course, if we're unimpaired, that 502(h) claim gets paid in full.

What the plan and confirmation order don't provide -- we have no indication whatsoever whether those rights are being impaired here. So we're concerned, Your Honor, that -- we want to make sure there's language that there's a level playing field and that the defendants have a right, if there is a claim brought, to assert their rights and defenses against that litigation.

THE COURT: I guess I'm -- of course, I can't keep up with these moving targets, but how could there be elimination of a right that could only exist if you turned over a transfer?

MR. WINSBERG: I agree with you, Honor. It's the language in the plan. As Mr. Lubic said, there's many provisions in there. And I would add to his provisions section 10(f) and 10(g) of the plan. There's all these provisions in there, when coupled together, you give rise to arguments and careful lawyers making creative arguments that things are being cut off. And we don't think that should be -- that's appropriate here.

So what we're asking for isn't -- we don't believe is controversial. But we've not seen any language from the debtor or anybody else that would fix the issue. And we heard Your Honor speak to Mr. Lubic, and we will prepare -- we haven't seen the UCC's language, but we will certainly prepare language and work with others that we think could fix it. We think it's an easy fix. But we just need to make sure those rights are preserved.

THE COURT: Okay. Well, why don't you take Mr. Lubic's suggestion -- I mean, do the same, which you've virtually done. Let's see what the UCC does first, and if not, maybe you and Mr. Lubic can put your heads together and give me three sentences to fix it. I mean, I don't -- they seem like nonissues to me, but I share your concern that we shouldn't create unnecessary confusion downstream for future generations.

Okay, anything else?

MR. WINSBERG: No, Your Honor. Thank you for your

time today.

THE COURT: Thank you for your time, Mr. Winsberg. Have a good day.

MR. WINSBERG: Thank you. You too.

THE COURT: All right, Ms. Parada, we're going to get Mr. Heaton, I believe, and then Mr. Newman.

Good afternoon, Mr. Heaton. Nice to see you.

MR. HEATON: Good afternoon, Your Honor. Nice to see you.

Geoff Heaton, Duane Morris for Arbormetrics; Asplundh Construction; Western Environmental Consultants; Utility Tree Service; and Trees, LLC.

Your Honor, my comments fold into the colloquy that you had with Mr. Lubic a few minutes ago. Our clients filed objections to assumptions of executory contracts, raising the same indemnity and contribution issues that we've been discussing today. However, our clients noted in their objections that in fact, there are no executory contracts. They were all terminated pre-petition. The debtors, in response to our objections, agreed with us and said, yes, we've reviewed the matter, and we agree, there are no executory contracts. These were all terminated pre-petition, which we thought should resolve the matter. However, in the debtor's confirmation brief, in footnote 22 on page 68, they single out our clients, and they say that, "upon further review, the

debtors have determined that they agree with these parties that their contracts were previously terminated and are not executory. In any case, however, these indemnification rights would be nullified subject to operation of the Code and state law as described above."

And they have similar comments in the spreadsheet summarizing plan objections that is attached to their confirmation brief, which is docket number 7528. So Your Honor, the plan supplement provides that if a contract gets assumed, the indemnification rights -- or indemnification claims are disallowed. However, this suggests to us that the debtors are taking the position that even if you don't have any executory contracts with the debtor, your indemnification claims are still disallowed under the terms of the plan.

THE COURT: But Mr. Heaton, wouldn't they be subject to the discharge if the debtor confirms the plan? 1141, how could that -- how could a claim that might have existed be passed through? It would be discharged, wouldn't it? Wait, now I can't hear you.

No. Ms. Parada, can you hear Mr. Heaton?

MS. PARADA: No, Your Honor. I cannot hear Mr. Heaton.

THE COURT: Well, see, it's not my end, Mr. Heaton. It's something at your end that's not -- why don't you click your mute button and then unclick it now?

MR. HEATON: Does that work, Your Honor?

THE COURT: It worked.

MR. HEATON: Okay, great.

THE COURT: When in doubt, reboot.

But if there's a contract that is now -- the counterparty says it's no longer executory, it's terminated; it would seem to me that's a classic case where if there's some right that your client has to assert, it should be the subject of a proof of claim. Am I missing something?

MR. HEATON: No, you're not, Your Honor. We have filed proofs of claim for those indemnification rights --

THE COURT: Okay.

MR. HEATON: -- contractual and otherwise. However, this suggest to us that the debtors are saying, your proofs of claim with be disallowed under the terms of the plan.

Now, this folds into what you discussed with Mr. Lubic. What's the issue here? Well, we agree, but it suggests to -- we don't want to be in a position where the debtors say, well, look here, your proofs of claim are disallowed.

Last week, Mr. Karotkin, when describing the proposed resolution with the OCC, I believe he said that they had agreed to terms essentially if no contracts were being assumed, the parties reserved all rights. And I believe Mr. Lubic said essentially the same thing in part 3 of what he discussed with you. And we agree with Mr. Lubic that that should be the case.

And so --

THE COURT: Well, why wouldn't a fix be something as simple as, a contract that was terminated pre-petition will be the subject of the claims allowance process? It's not deemed allowed -- I mean disallowed, because that's of no meaning at all. If you file a claim, it's deemed allowed unless objected to.

MR. HEATON: Yeah, we agree totally, Your Honor. We just don't want to have someone pull an aha, gotcha after the fact.

THE COURT: Okay.

MR. HEATON: This language that I quoted concerned us. This folds into what Mr. Lubic said, and we agree with Mr. Lubic's proposed language.

THE COURT: Okay. Well, Mr. Heaton, I don't want to make this sound like we got to go back and forth every time Mr. Karotkin wants to be heard. My suggestion will be that if this problem gets swept up in whatever the OCC works out, fine. If not, you can join forces with Mr. Lubic and get something that just states the obvious. It seems to me it states the law. But I share with you, you shouldn't be confronted with a contrary provision in a plan. So --

MR. HEATON: Thank you, Your Honor.

THE COURT: -- I think you're in a good position to be able to protect your clients' interests.

Okay? Anything further today?

MR. HEATON: That's it.

THE COURT: All right.

MR. HEATON: Thank you very much, Your Honor.

THE COURT: Thank you. Thank you, Mr. Heaton.

And Mr. Newman will be the last person that's going to speak on this issue.

Mr. Newman, we're bringing you into the room here, so your hand goes down. Mr. Newman, good afternoon. Can you hear me?

MR. NEWMAN: I can, Your Honor. Can you hear me?

THE COURT: Yes. Please state your name for the record.

MR. NEWMAN: Thank you, Your Honor. Sam Newman representing McKinsey & Company, regarding our objection filed at docket 7334 and 7349.

THE COURT: All right.

MR. NEWMAN: Your Honor, I'll be brief as possible. I think the comments you made in the last colloquy clear up one of our two issues with respect to the allowing process. And that is not your intention that anything in the plan would affect the allowance of unsecured claims, whether for rejection or otherwise, simply because they relate to indemnification or contribution. And that will be subject to a subsequent claims allowance process with all rights reserved. We thought that

was the intention of the settlement on Friday, and we think that that's the appropriate way to address any issues with respect to our claim, given that our claim is to be treated as unimpaired, as all unsecured creditors.

We would wait for the UCC's proposed language, and we will cooperate with the other vendors, to the extent we think additional --

THE COURT: Okay.

MR. NEWMAN: -- information is --

THE COURT: Again, let me -- and let me use you -- your presence as a way just to address a comment to you, but really to a number of other lawyers. I rely on people giving me the straight scoop, and when someone several days ago said, we got that resolved, and a stipulation is stated in this kind of a colloquy, I simply can't keep track of it. So I'm assuming it'll be memorialized in some fashion. And you and the other counsel who just spoke are the guardians when this thing gets close to a final order. But my expectation is -- and Mr. Karotkin and his side will memorialize, well, all of these things that have been worked out in some global fashion that's consistent with everybody's interest.

You had two points, though. What was the other one?

MR. NEWMAN: Yes, the other issue -- and I wasn't sure if it was unclear in some of the comments and colloquies, but I just wanted to make this clear for the record that our view is

that with respect to the requirement to state your cure, under 365(a)(1) -- I'm sorry, (b)(1)(A) -- you have to, at the time of assumption, cure default. The debtor's obligation is to cure defaults, not to cure all claims. And the issue that I think has been somewhat aggregated inappropriately is the question of whether there's a default at the time or whether you somehow have to state all potential claims that may flow from the facts as they then exist.

So with the particular example of indemnification claims, if there is no present default or failure to pay on behalf of the debtor, then the default that needs to be cured is zero, but that doesn't obviate the fact that under 355(b)(1)(c), the debtor still has to adequately assure that it will make future performance if and when that performance is due.

So in the example of the Montali-Karotkin lease, at the July assumption date, one has to pay the June rent if it's not been paid as a cure but doesn't have to pay the August rent.

THE COURT: Well, no. But on the other hand, if Mr. -- who should we have in bankruptcy? I think we'll have Mr. Bray in bankruptcy. So if Mr. Bray says, I'm going to pay my future obligations to Mr. Karotkin, and Montali, the guarantor says, wait a minute. There's no way you're going to be able to do it. Then you put in issue the ability to perform

in the future. That's a defense that I think you have to make -- or an objection you have to make for a contract being assumed, don't you agree?

MR. NEWMAN: I don't agree. I think, Your Honor, that if one wishes to object on the basis of whether or not the debtor can adequately assure future performance, whether they're able to perform, that's an objection that needs to be made --

THE COURT: Right.

MR. NEWMAN: -- at the time.

THE COURT: Right.

MR. NEWMAN: And then all then-outstanding defaults have to be cured. So if you look at the example of the Arriva Pharmaceutical case that Mr. Karotkin cites --

THE COURT: I'm sorry, which case? Which case?

MR. NEWMAN: Arriva Pharmaceuticals. That was the case that Mr. Karotkin referred to earlier.

THE COURT: Okay. I don't know the case, but I remember he said something. But what about it? I mean, what --

MR. NEWMAN: The point in that case is that the debtor had breached the agreement. In that case, it was an IP license that had assigned certain intellectual property to itself in violation of the license. And the court determined that that breach had occurred pre-assumption, and therefore, any cure

relating to that breach had to be asserted at the time.

THE COURT: Right.

MR. NEWMAN: And we agree with that. My point is if the conduct in question has not given rise to a default, there is nothing in §365 that requires any particular provision to be made for future performance. Defaults that exist on the assumption date have to be cured. That's 365(b)(1)(A). And adequate assurance has to be made for future performance under (b)(1)(C) if the debtor has made a prove-up already of their ability to adequately assure future performance. It's not a question of whether or not they're willing to perform in the future. It's that they can. And that's not what's at issue here. By pointing to the contract --

THE COURT: But you still have to assert something if you question the assuming debtor's ability to perform in the future.

MR. NEWMAN: That's correct. However, all we have to do is point at the contract to identify what the debtor's obligations are. And the debtor has already said that they have adequately assured future performance. And that's not in dispute. Their assurance of future performance is their balance sheet and their business plan. They intend to perform their obligations prospectively.

THE COURT: Well, what's a --

MR. NEWMAN: This is --

THE COURT: -- go ahead, you finish. Finish your point.

MR. NEWMAN: -- this is a question of what's being raised by the language in the supplement. And when you talk about an easy fix, there's really one line in the supplement that puts this at issue today, where they say that any assumed contract does not include indemnification provisions. It doesn't say that you have to cure or state the cure of unperformed indemnification provisions. And it doesn't say that the debtor is not able to perform in the future its assumption obligations. All it says is that for no reason tied to any case law, that those particular provisions, as you discussed earlier, are sliced out with the scissors. And that's what we're arguing is inappropriate.

THE COURT: So what's --

MR. NEWMAN: We have to cure --

THE COURT: -- the --

MR. NEWMAN: -- defaults today --

THE COURT: -- what paragraph --

MR. NEWMAN: -- and the debtor's already -- sorry, go ahead, Your Honor.

THE COURT: -- what paragraph in the supplement --

MR. NEWMAN: I believe it --

THE COURT: -- where do I find --

MR. NEWMAN: -- I believe paragraph 13.

THE COURT: 13. Yeah, that's the -- I think 13's the unlucky number. That's been cited before.

So let's test it. So if -- I'm going to go back because leases are so easy. So you're the landlord, and I'm the tenant, and I owe you one month's rent, but I'm on shaky ground. And I make my motion to assume, and I say my cure is one month's rent, and I know I can perform going forward. Your response is, no, your default is two month's rent, and you are financially impaired, and you won't be able to perform going forward. You have to raise both of those issues, right? And if you understated your default or didn't state your challenge to my ability to perform in the future, you would be stuck with it, right?

MR. NEWMAN: That is correct. However, Your Honor, under --

THE COURT: But what if I said, and also, I'm going to perform all my indemnity obligations? Don't you --

MR. NEWMAN: So --

THE COURT: -- we'll have to put that at issue, too?

MR. NEWMAN: -- so Your Honor, I don't think that I have to put -- I don't have to copy into my (break in audio) --

THE COURT: Sorry, you're -- I could hear you, and then I lost you again. Maybe it's my end.

MR. NEWMAN: I don't think there's any case law to suggest that I have to specifically put every provision of the

contract into my (indiscernible).

THE COURT: Hold on, Mr. Newman.

Ms. Parada, are you hearing him clearly, or --

MS. PARADA: No, he's cutting in and out.

THE COURT: Yeah.

THE COURT: You're the culprit --

MS. PARADA: It's faint.

THE COURT: -- again, Mr. Newman. I'm not. Your voice is cutting in and out. So just say it again, if you can. Maybe you're moving away from the microphone. I'm not sure.

MR. NEWMAN: Sorry, I'll try. Can you hear me now?

THE COURT: Sort of.

MR. NEWMAN: So my point is simply --

THE COURT: Yeah, your voice comes in and comes out. So I don't know whether it's your connection or your microphone. I don't want to lose the point, but --

Mr. Karotkin, are you having trouble hearing him also?

MR. KAROTKIN: Yes, sir.

THE COURT: Yeah, so it's coming from your end. Well, let's see. Why don't you do what I did through the other counsel? Turn of your mute -- mute your microphone and then unmute it, and see if that -- now unmute it. Now say something.

MR. NEWMAN: Is that any better, Your Honor?

THE COURT: Yeah.

MR. NEWMAN: (Indiscernible)?

THE COURT: Sort of.

MR. NEWMAN: I will conclude very briefly.

THE COURT: No.

MR. NEWMAN: (Indiscernible).

THE COURT: No, it's not working.

MR. NEWMAN: Give me one second, Your Honor. I tried to mute the video and the audio.

THE COURT: No, it's the same. It's the same, it's in and out. Let's --

MR. NEWMAN: Is it any better if I'm audio only?

THE COURT: No, it sounds like you're underwater. Can you hear me now, Mr. Newman?

MR. NEWMAN: I can hear you, Your Honor.

THE COURT: No, same problem. Okay, turn your video back on. I'm afraid I can't just keep you on hold here.

MR. NEWMAN: No, I understand, Your Honor.

THE COURT: Why don't you see if you can succinctly restate it in the form that you're trying to make and put something on the docket? I'll do my best to review it. I mean, I want to get the point. I don't -- and you know, I can -- unfortunately, we just don't have the luxury of continuing this hearing any longer. Try one more time. Let's see what happens.

MR. NEWMAN: Okay. So my only point, Your Honor, was

that we don't have to put every aspect of the contract in our adequate assurance objection. The debtor is assuring us that they can perform all aspects of the contract, and that is not at issue. And all we should have to put out today is our objections to the cure amount, which has been done. And nothing in the plan should impose a higher standard.

THE COURT: Okay, I got it.

MR. KAROTKIN: Your Honor?

THE COURT: Yes, sir? Mr. Karotkin?

MR. KAROTKIN: I thought I heard somebody say -- and I didn't hear it clearly -- that -- maybe it was Mr. Newman -- that certain things have been worked out, and I'm not sure I know what he was referring to.

MR. NEWMAN: No, Your Honor, I don't think anything has been worked out. There was a proposed settlement discussed on Friday that I think has not materialized.

MR. KAROTKIN: Okay.

MR. NEWMAN: We were simply trying --

MR. KAROTKIN: Sorry to interrupt.

MR. NEWMAN: -- no, we were simply trying to use that as a framework to indicate what I think a fair result is, that objections to claims should be reserved with all rights to a subsequent proceeding.

MR. KAROTKIN: Thank you. I'm sorry to interrupt.

THE COURT: Okay. On that note --

MR. NEWMAN: So just concluding briefly, Your Honor, as it appears that you can hear me a bit better, we think that the cure amounts have been put at issue and have been stated. And other than that, all of the obligations under the contract should have to be performed in the future. And that's the point of what I think is the conflation of the two issues. We don't have to state today each specific provision of the contract that needs to be reformed or the amount that we think in the future they'll be unable to perform. They have assured us they can adequately perform their obligations under assumed contracts, and they should have to do that.

THE COURT: Okay, got it. Thank you very much, Mr. Newman.

MR. NEWMAN: Thank you, Your Honor. Sorry for the technical difficulty.

THE COURT: No, we got it straightened out.

Okay, one second, Mr. Karotkin. All right, by my calculation, we're down to -- well, Mr. Maltin (phonetic). Mr. Maltin did not re-raise his hand, so I'm assuming he doesn't want to add anything at this point.

Mr. Maltin, I'll say once again, if you're out there, and you want to weigh in, you're welcome. Okay, you're not.

Mr. Karotkin, by my calculation, we're ready for Mr. Bennett or Johnston, or both, and then you, right?

MR. KAROTKIN: I think so, sir. Yes, sir.

THE COURT: Okay. Ms. Parada, let's bring Mr. Bennett and Mr. Johnson in, and they can tell me how they want to divide up their time.

I see Mr. Bennett. Good afternoon, Mr. Bennett. Unmute your microphone.

MR. BENNETT: Good afternoon, Your Honor.

THE COURT: You've got unmute yourself. All right. Would you state your name for the record.

MR. BENNETT: Bruce Bennett, Jones Day, for plan proponents.

THE COURT: And Mr. Johnston, same?

MR. JOHNSTON: Good afternoon, Your Honor.

Jim Johnston of Jones Day on behalf of the shareholder proponents.

THE COURT: Okay. One second. I'm going to turn your volume up a little bit. Wait a minute. Not yet.

Okay. Who is going first?

MR. JOHNSTON: I think I have the honors, Your Honor.

THE COURT: Okay.

MR. JOHNSTON: And I'm going to tackle the response to PERA, and the Class 10A-II claim. And Your Honor, after what you heard on Friday, which seems like a lot more than a few days ago, but what Mr. Behlmann and Mr. Etkin said really needs a great deal of correcting, so I'm going to try and do that in my time here today. And I'll start just by clearing out some

of the underbrush, starting with PERA's actual claim.

Mr. Behlmann conceded that PERA's latest proof of claim, and the only one it filed in connection with the extended bar date procedures that Your Honor specifically crafted to address Class 10A-II, asserts a claim in the amount of 119,134 dollars. That claim was signed by an actual PERA representative, and it liquidates the alleged damages to the penny.

Mr. Behlmann's right that PERA's lawyers, I think his firm, had filed a proof of claim more than six months earlier, and that lawyer claim was marked unliquidated. One would think that the clients, PERA, knows its actual damages better than its lawyers, and that PERA has now liquidated its claim in the amount of 119,000 dollars, and so I think it's fair to assume that the second claim signed by the client, and not the lawyer, with a statement of liquidated damages supersedes the first.

THE COURT: Can you give me the claim numbers?

MR. JOHNSTON: Yes, the most -- the client claim, the most -- the latest claim is proof of claim 101691.

THE COURT: Okay.

MR. JOHNSTON: The earlier claim asserted against PG&E Corporation is proof of claim 71345, and there's an identical claim to that one asserted against the utility at 69105.

THE COURT: Okay. And 101691, by PERA, who is that asserted against?

MR. JOHNSTON: That is asserted against PG&E Corporation.

Regardless of that, one thing we do know for sure is that Mr. Behlmann's assertion of twenty-two some-odd million dollars in PERA losses is unequivocally false. Mr. Behlmann cited the schedule attached to the earlier unliquidated lawyer proof of claim which shows purchases of PG&E stock during the class period in the neighborhood of twenty-two million dollars, and he said voila, PERA has a twenty-two million dollar claim.

But Mr. Behlmann forgot to mention that that very same schedule discloses more than seventeen million dollars in proceeds from the sale of PG&E stock. You can't assert a twenty-two million dollar fraud claim related to twenty-two million dollars in stock purchases when you wound up selling the stock for seventeen million dollars.

This isn't, quote/unquote, manipulating the optics as Mr. Etkin called it. It's simply a fact that this is an inflated, and we think largely, if not, entirely bogus claim. And it's simply a fact that as we discussed on Wednesday, PERA is the one and only Class 10A-II claimant who has objected; no one else.

Okay. Second point is the issue of PERA's alleged claim against the utility. Mr. Behlmann said that PERA needs the right to assert claims against the utility because the utility because the two estates have not been substantively

PG&E Corporation and Pacific Gas and Electric Company consolidated. That's true, but when you look at the PERA complaint, you'll see that there's not a single claim asserted solely against the utility. In fact, PERA's complaint alleges that the utility is an alter ego of PG&E Corporation, that's the fourth cause of action in the complaint, and PERA actually alleges that PG&E Corporation and the utility, are one in the same.

To quote paragraph 43 of the complaint which is Debtors' Exhibit 82, "The utility effective acts as an alter ego of PG&E." Then it goes onto give some allegations that supposedly support that, and then it says, "Accordingly, this complaint refers to the utility and PG&E interchangeably, as 'PG&E or the company, unless otherwise specified.'"

So it's richly ironic that PERA now objects to the plan due to its alleged failure to treat claims against the utility.

The plan just reflects what PERA itself has alleged --

THE COURT: Mr. Johnston, you opt for the solution there under the Circuit's Del Biaggio decision, and we treat them as the parent anyway, right?

MR. JOHNSTON: That is correct.

THE COURT: Okay. Well doesn't -- if I buy that argument, doesn't that moot this whole discussion?

MR. JOHNSTON: I think it does, yeah.

THE COURT: Okay.

MR. JOHNSTON: The point is that the failure to classify and treat a claim against a utility is not a basis for denying confirmation of the plan.

THE COURT: Okay.

MR. JOHNSTON: Right.

THE COURT: Well, I think both of the counsel on Friday made the point that they weren't urging denial of confirmation. I mean, some objectors are urging denial of confirmation; they are not. So I fully perceive that to be a way of saying, if I am otherwise satisfied that the plan should be confirmed, then I put PERA in the category of many others that there has to be a way to preserve their position or fix it in the plan or something. I mean, something has to happen.

So you agree with that, don't you, that that -- if the plan gets confirmed, you still have to deal with PERA one way or the other?

MR. JOHNSTON: Yes and no, Your Honor. If the plan gets confirmed, the plan will specify the treatment of PERA's claim. We will have to deal with the liquidation of those claims and allowance of those claims, if at all.

THE COURT: Right.

MR. JOHNSTON: In that context, we will be dealing with them.

THE COURT: Right, right, I understand, and whether it's your formula, or their formula, or some other formula, or

something, it's something. Something has to be done. Okay. I think we're on the same page here.

MR. JOHNSTON: Okay. So let's talk about the formula, and I think the best place to start is with PERA's own slides, which are very revealing. So I've got them. If you don't mind, I will pull them up on the screen and we can go through a couple of them.

THE COURT: Oh, you have -- Ms. Parada, we have to let -- no, he shares -- we do have to let him share? No, he shares. There we go. Okay. All right.

MR. JOHNSTON: Okay. Can you see the demonstrative up on the screen, Your Honor?

THE COURT: I know it well. I memorized it.

MR. JOHNSTON: Okay. So this is slide 10 from PERA, and I think the point Mr. Behlmann was trying to make is that there's some sort of inconsistency in using a petition date claim amount, an outstanding share amount as of the petition date with a market capitalization as of an earlier date, October 12, 2017. And I guess that's why they put October 12 in the area red fonts there.

THE COURT: Well, I think they --

MR. JOHNSTON: As --

THE COURT: -- put it in red because that was the date you gave them.

MR. JOHNSTON: Correct, but notice that's different

than the rest of the fonts on the slide, and I'll get to October 12th in a minute.

I submit, Your Honor, and I think you picked up on this on Friday, this slide is highly misleading. The allowed claim amount is whatever losses can be proven. That claim may be allowed as of the petition date, but the calculation of those losses is not a petition date issue. PERA's alleged losses were incurred, if at all, well before the petition date.

THE COURT: I think Mr. Behlmann conceded that point in the late part of the argument --

MR. JOHNSTON: I --

THE COURT: -- because he was going around with all the other dates and I said, what about you giving up on the petition date, he said, yes; I mean, words to that effect.

MR. JOHNSTON: He conceded it may be marginally because then he pivoted to a date that would was the end of the class period several months earlier, and --

THE COURT: Well, that's because he didn't like your date.

MR. JOHNSTON: Correct.

THE COURT: He liked his date a lot better than your date, and the petition date was the least appealing. But anyway, I understand your point.

MR. JOHNSTON: Yes. And I'm here to tell you why his date, no matter how it moves, is inappropriate.

So let's talk about the October 12th date. That is when PERA's losses allegedly were occurred. In the complaint, the first loss is alleged to have occurred sometime during the day on October 12, 2017. We didn't pick that date, Your Honor. It's not "reverse engineered" to use Mr. Behlmann's term. PERA chose the date and the quotes from the complaint that I read you on Wednesday make that crystal clear.

So each of the components of the plan formula are consistent. They're consistent with the incurrence of losses as of October 12, 2017. And I explained on Wednesday why, given the allegation of first disclosure on October 12, 2017, that's the most relevant and logical date for determining sharing between shareholders, and fraud claimants.

So PERA tried to rebut that logic by showing a series of slides starting on slide 13, which I think I can flip through here, you see they say well, there were a lot of other disclosures, and there were nine separate disclosures, so nine separate frauds occurred over the course of the next thirteen months.

Your Honor, I submit to you that that is absurd, and I don't use that word lightly, to suggest that there were nine different frauds. There's one alleged fraud. The alleged failure to disclose what everyone already knew; that PG&E might start a fire, and be strictly liable for the resulting damages. The nine, quote/unquote, cleansing disclosures all relate to

that one alleged fraud.

You heard Mr. Behlmann talk about an allegation of the fraud being unwound over time. That is a concept that's sometimes used in connection with accounting fraud. If a company withdraws its financial statements as inaccurate, it may take a while for it to generate new, accurate statements, and the issuer might go onto correct misstatements one by one, resulting in separate corrections, and separate dates for measuring losses. That's not what happened here. You have one, and only one, alleged fraud.

But the entire premise of the series of slides you were shown is that there were nine alleged frauds, and that every dollar of the decline and stock price from October 12, 2017, to November 15, 2018, is 100 percent attributable to those alleged frauds.

That ignores both the law, and reality. The Federal Securities Laws do not presume that every dollar of loss, or stock price decline is attributable to the supposed fraud. That's why there's the requirement of loss causation, and it's particularly important here where you have a lengthy class period, and numerous alleged misstatements, and supposed corrective disclosures. By arguing that every dollar of decline in PG&E stock price over the course of 399 days is attributable to this supposed fraud, PERA's essentially arguing that the securities laws give it some kind of investor

insurance.

PERA's various charts in theory ignore everything that was happening during those 399 days. They ignore the CPUC's denial of inverse condemnation cost recovery to San Diego Gas & Electric, and the perceived impacts it had on PG&E's exposure for wildfire loss. They ignore the ignition of the North Bay Fires, and ignore the Camp Fire.

Let's look at slide -- another one of PERA's slide, slide 23.

THE COURT: Wait, back up. Wasn't the Camp Fire right when the last period ends -- no, the Camp Fire was a few days -- excuse me, the Camp Fire was a few days before the close of the class period; isn't that true?

MR. JOHNSTON: That's correct. That is --

THE COURT: Okay.

MR. JOHNSTON: -- what this slide that I'm showing you right now --

THE COURT: Yes.

MR. JOHNSTON: -- showed.

THE COURT: Okay.

MR. JOHNSTON: You see that big drop right before the end of the class period, that's on -- the class period ended on November 15. On November 8th, the class period --

THE COURT: But I thought --

MR. JOHNSTON: -- sorry, the Camp Fire was ignited.

THE COURT: -- I thought it was November 8th, and if the class period ends, November 8th. Okay.

MR. JOHNSTON: And PERA would have you hang every single dollar of that stock price decline on an alleged fraudulent failure to disclose that PG&E might be liable for the fire.

THE COURT: Well, you make a good point, but what about somebody who didn't know anything about the history, who bought the stock, or bought the bonds, two weeks before the Camp Fire?

MR. JOHNSTON: That person is charged with constructive knowledge, at least, of the entire public record up to that date.

THE COURT: Oh, maybe so, but that goes to how that person maybe doesn't have a claim at all, right?

MR. JOHNSTON: That's correct.

THE COURT: I didn't --

MR. JOHNSTON: And as I will get to, it goes to why that person can't possibly, if that person can prove a claim, be able to share in a market capitalization of PG&E that diminished five or six times over from the time that this alleged fraud was first disclosed.

THE COURT: No, I understand. I agree with you. I mean, I understand your point.

MR. JOHNSTON: And Your Honor, I think your

hypothetical on Friday hit the nail on the head. If someone holding shares on October 12, 2017, suffered its alleged loss on that date, those losses didn't somehow increase over time, if the shareholder decided to hold the shares, and roll the dice, as I think you put it.

So I think the best way to absorb that is by going back a few slides, and this is PERA's -- let me just adjust the sides here. So this is what PERA says is the net impact of the nine corrective disclosures over time. And I'm glad they got it down on paper because I think it says something astonishing. On this slide, PERA claims that the alleged fraud that PERA admits was at least partially revealed on October 12, 2017, grew to be roughly 28.8 billion dollars in the thirteen months after October 12. Everything but that blue slice in the upper left-hand corner is alleged to be fraud. That's more than eighty percent of PG&E's market capitalization on the date of the first disclosure.

And more importantly for today's purposes, it's four times the size of the petition date capitalization that PERA itself had said should be the baseline for determining sharing under the plan. PERA wants to shove 28.8 billion dollars of fraud claim into a 7.3 billion dollar pot. There's no consistent, intellectually coherent basis for doing that, and I think Mr. Behlmann and Mr. Etkin effectively admitted as much.

You had the discussion with Mr. Etkin about his pivot.

He simply picked a new capitalization date for his formula on the fly when he realized that you weren't going to go for the petition date capitalization. That wasn't in his brief, and it's not reflective of any logical reasoned approach. All that the pivot reveals is an intellectually bankrupt position, and PERA, I submit, has no coherent theory at all.

So Mr. Etkin then pivoted again and he said wow, we really should be mediating this, and he claimed to have been ignored in prior discussions. Your Honor, that's astonishing. There's an ongoing multi-month mediation going on with PERA about these claims. I don't know how Mr. Etkin can say there's been no effort to engage. You know, those were his words, and they're just false, given the pending mediation.

So before I move off the subject of the formula, let me just spend a few minutes on what the plan actually does. Unlike what PERA suggested, the plan formula has a coherent consistent basis, and in a nutshell, that is to give the fraud claimants what they thought they were getting when they invested.

Mr. Behlmann needs the first page of our demonstrative to set up a strawman, and I'll flip back to that, and this will be the last time we look at these charts. Right here, this was actually our demonstrative that he put up on the screen, and he said look at that -- he said, we're trying to limit the entirety of the fraud claim to the orange wedge, and that's

what he juxtaposed against his 28.2 billion dollars in fraud, and he said that's unfair, but that's not what the plan does. There's a reason why we labeled that particular orange wedge hypothetical.

All that chart shows is the market losses over two days in October 2017 after the disclosure of the alleged fraud. At the end of the day, the fraud claims are whatever they will be, if anything at all, and whatever they are, they're accounted in our plan formula. But then Mr. Behlmann said well, gotcha, the Ninth Circuit holds that benefit of the bargain is not the measure of the securities fraud claim. So our plan formula which seeks to give fraud claimants what they thought they were getting doesn't work. I submit, Your Honor, that's misdirection.

As I argued on Wednesday, the measure of damages is relevant to the determination of the allowed amounts of PERA's claim. That's the numerator in our formula. That amount will be whatever it will be under governing law, if PERA is able to prove its claim.

The question we're talking about here is something entirely different. We're figuring out how that claim, if and when it's allowed, gets treated under the plan, and so PERA is just conflating claim allowance with treatment.

On the numerator, Your Honor, we had a dispute regarding the reduction in claim amount for insurance received

by a claimant. To respond to the question that you asked that you asked at the beginning of the day on Friday, the plan is not distributing insurance proceeds on account of the claim. What the plan does is it deducts a particular claimant's claim amount and it recognizes that the claim is smaller because of the payment of insurance from the estate.

I think, at the end of the day, Mr. Behlmann's proposed fix to the plan language which concedes that a deduction is appropriate in some circumstances, proves that there's no Ivanhoe issue here, proves that there's no collateral source issue. The payment is from insurance that's otherwise available to the debtors, and any payment from insurance is a reduction in assets available to the estate.

THE COURT: Why isn't it Ivanhoe because remember in Ivanhoe, you have two wrongdoers. In this case allegedly, you have two wrongdoers, the corporate entity, and the individual whose insurer has to pay. So why isn't that Ivanhoe in spades?

MR. JOHNSTON: Because Ivanhoe, I think the key of Ivanhoe is that there's two sources of payments, and the point to be made here is that insurance that's property of the estate is one source of payment.

THE COURT: Oh, well, then, Mr. Johnston --

MR. JOHNSTON: It's the same as the estate.

THE COURT: -- Mr. Johnston, if insurance is property of the estate, this is all a complete red herring because the

only way you ever have to worry about someone being paid from some other source is when you wiped out the entire insurance tally B and C, and left the debtor insolvent because you never --

MR. JOHNSTON: It --

THE COURT: -- you never have to tap the insurance funds that protects non-debtors.

MR. JOHNSTON: And Your Honor, we are prepared to concede that any payment from the Side A coverage should not be deducted from the claim amount.

THE COURT: Well, I mean, that's the end of the story on that issue, isn't it? I mean --

MR. JOHNSTON: I think so.

THE COURT: -- you didn't --

MR. JOHNSTON: The PERA objection was --

THE COURT: -- seen it the other day.

MR. JOHNSTON: -- PERA had objected to the deduction at large. We will make a modification that says that insurance proceeds received solely from the Side A part of the coverage, which is only available when all the shared coverage is exhausted, and there's a non-indemnified loss --

THE COURT: Well, you just --

MR. JOHNSTON: -- that will not be deducted.

THE COURT: -- you've just argued yourself, and conceded yourself out of the Ivanhoe trap. So I -- we're on

the same page. So what do we do -- and let's go -- I appreciate that you did it, you confirmed it, cleared it. I thought it through a lot since their argument and I couldn't reach my -- any other conclusion, and you made my life easier by conceding the point.

But why is your October 12th date the right date for someone who invested later? And if your response is, well later, we'll get rid of his claim, and I say, then it doesn't matter. In other words, why isn't it more appropriate to do away with a formula until we know what the allowances are? Because my guess is that some poor guy that bought 1,000 dollars' worth of PG&E stock the day before the Camp Fire, probably isn't going to make a fraud claim at all because there's no fraud, because it's so obvious of the risk of investing in PG&E. So why do we have this crazy formula that just invites litigation when the proof is to find out what the real claims are?

MR. JOHNSTON: Well, Your Honor, that's only half the story. To find out what the real claims are is the claim allowance.

THE COURT: Yeah.

MR. JOHNSTON: But that doesn't answer the question of how that claim, if it's allowed, is entitled to share with common shareholders.

THE COURT: No, I under --

MR. JOHNSTON: That --

THE COURT: -- I understand that it doesn't, but -- and then I know that's what you're trying to do here, but I'm struggling with why I should create a formula which is homemade -- not homemade; it's the wrong word. I don't mean to say you don't have a good intellectual basis, but there doesn't seem to be a single case that's dealt with this issue, and it may be a nonissue if the allowed claims are -- you have an insignificant amount.

MR. JOHNSTON: But the liquidation and litigation of those claims is not going to make the question any easier at the end of the day, other than if we win, and there are no claims, but the plan has to account for the contingency of at least some of these claims ultimately being allowed. That's all that this formula does.

THE COURT: I know.

MR. JOHNSTON: And let me take one more crack at trying to explain why we think October 12th makes sense.

What we're trying to do is really honor the core goal of 510(b), and that's by making the economic position of Class 10A-II claimants consistent with that of holders of common stock. The goal is to make sure that the plan does not place the fraud claimant in a better position, or a worse position in relation to current shareholders than would've been the case had the Chapter 11 cases not occurred.

We know that the shareholders of PG&E suffered a tremendous loss in value since October 2017. PERA's materials demonstrate that above all else. The suggestion that you heard on Friday that existing shareholders are somehow getting a windfall now is silly.

Existing shareholders are not being, quote/unquote, reinstated as Mr. Behlmann claims. Their existing ownership interests are being massively diluted by all the new stock issued under the plan, including more than twenty percent going to the fire trust, and all the new shares to be sold in the market as Mr. Karotkin and you discussed earlier this morning, and that of course, says nothing of the massive losses suffered before bankruptcy, which we saw from the stock price charts.

The plan formula treats the fraud claimants commensurate with the shareholders who suffered that loss. The formula takes damages, if any, that are proven by an individual fraud claimant, and converts them into common stock in a way that reflects the same diminution in value, as was suffered by the shareholders as a result of the fires.

Applying the plan formula, the Court need not parse out which claimants bought shares when, and which sold shares when. That's for the time of claim allowance which will address purchases and sales, and every claimant individual's circumstances. Once a fraud claimant is allowed, if ever, the plan formula puts the claimant on an equal footing with the

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shareholders who held their stock and suffered losses as the share price declined.

By definition, PERA's argument for a petition date capitalization, or an end of the class period capitalization ignores the losses suffered by shareholders, and in so doing --

THE COURT: Hang on. Mr. Johnston, I have to tell you that we're sympathetic -- I'm sympathetic to lots of people who lost things, from fire victims, to contract parties, to defrauded investors, to shareholders, but that's not the test. The test is under the plan, if you weren't subordinating under 510(b) and be paying these people money, because you're taking advantage of the consequences of the law that says where do you treat people in a solvent case, the answer is you must treat them pari passu, not based upon relative harm.

And the real easy answer here is in the Superior case, that says let's kick this can down the road, and deal with it later. Why isn't that a good idea?

MR. JOHNSTON: We can't do that --

THE COURT: Well, I mean --

MR. JOHNSTON: -- because kicking the can down the road --

THE COURT: -- it's not good because you didn't want to reserve for it, but if you reserve for it --

MR. JOHNSTON: Well --

THE COURT: -- you do it.

MR. JOHNSTON: And then all of the goals that Mr. Karotkin talked about earlier today with respect to a successful equity offering, go out the window.

THE COURT: But whose fault is that?

MR. JOHNSTON: And kick --

THE COURT: Is it the plaintiff's fault? You know, there could've been a motion to estimate under 502(c), eighteen months ago. There could've been a first day motion. This litigation was well known to PG&E, maybe not its bankruptcy lawyers, on the petition date, and here we are eighteen months later, and you're saying treat the defrauded folks like we're treating the lost expectation of the shareholders, and that's worthwhile, but it not what the law requires. So that's a dilemma.

MR. JOHNSTON: What I'm struggling with, Your Honor, is the idea that kicking the can down the road, waiting for claim allowance is going to make this any easier. It's not unless all the claims are disallowed. We're still going to confront the exact same issue.

THE COURT: Well, you could make a motion to estimate the claims. Now you can't do it in the next ten days but this gets back to my point. Your side, I can't remember who the lawyer was, maybe it was Mr. Bennett, I forget, somebody made a very persuasive argument to me that I shouldn't let this thing go to a class claim. And the arguments were, well, the class

plaintiffs waited too long and, right or wrong, I made the decision to let the late claim process go, but I think I even invited them something to try to flush it out.

So here we are, literally on the eleventh hour, and you're saying, oh, I'm going to throw the refinance into the toilet because we've got these unknown people. Well, why not do something about it? And I would welcome obviously immediate resolution, but I can't -- I don't think it's fair to say well, the stockholders suffer, therefore these plaintiffs should suffer equally. That's not the test.

The test is, if they have a valid claim under non-bankruptcy law, 510(b), then does this thing that's nobody done before, right -- and in Superior, they didn't do it, and the court said that's okay. And obviously there were reasons in Superior that probably have justified waiting. But here, I mean, I'm struggling with this notion of because it's easy to use the funnel that seems almost arbitrary to secure the securities offering is, therefore, I throw the plaintiffs under the bus and that doesn't seem right either. So that's the -- that's my dilemma at the moment.

MR. JOHNSTON: I agree, Your Honor. If our formula was throwing the plaintiffs under the bus, then you shouldn't do it. We do not think our formula is any way, shape, or form, throwing the plaintiffs under the bus.

THE COURT: If you'd made a 502(c) motion about the

same time we had one coming down the road in the Tubbs Fire, you wouldn't have had the Article III stuff, you would've had me, and I would've had Mr. Etkin and Behlmann on one hand and you on the other giving me the data to estimate the claims, and I might've estimated them at fifty dollars, or I might've estimated them at twenty billion or million dollars. But I haven't had that opportunity.

MR. JOHNSTON: No, we did not put that before you in large part because these claims came in the door within --

THE COURT: Eighteen months --

MR. JOHNSTON: -- the last --

THE COURT: -- eighteen months ago.

MR. JOHNSTON: -- eight weeks.

THE COURT: Eighteen months ago.

MR. JOHNSTON: Yes, we do not have an estimation motion before you.

THE COURT: Right.

MR. JOHNSTON: The plan is our best effort at doing what Section 510(b), which is subordinating the fraud claim to the level of common stock. If -- in Superior, the reason why the court was able to put it off was because the court thought, one, I think that was a closely held corporation, so a much different situation, and --

THE COURT: I think you --

MR. JOHNSTON: -- if I recall correctly --

THE COURT: I think Superior got it because nobody thought about it, and the Court of Appeals, who was a former bankruptcy lawyer, said well, we'll just let this -- deal with it later, and that was the result.

MR. JOHNSTON: And I believe the Court that it could kick the proverbial can down the road because the debtor appeared to be insolvent --

THE COURT: Correct.

MR. JOHNSTON: -- as well, so it would never be an issue.

THE COURT: Correct.

MR. JOHNSTON: So Your Honor, we think -- one last point. On the technical unfair discrimination point that PERA raised with respect to the subscription rights, the argument was that existing shareholders are getting subscription rights and the security fraud claimants are not.

As an initial matter, as you heard this morning, this is very likely a moot point --

THE COURT: Right.

MR. JOHNSTON: -- if the amended registration rights or backstop rights are approved next Tuesday, there will be no more subscription rights --

THE COURT: No.

MR. JOHNSTON: -- and this is a nonissue.

THE COURT: Well, I thought about that this morning,

too. Yes, I would agree with you.

MR. JOHNSTON: If that doesn't come to pass and subscription rights are used, we submit for the reasons I discussed on Wednesday, that there is no unfair discrimination here. In any event, as you recognized, the holder of a subordinated fraud claim is in a fundamentally different position than an existing holder of common shares, and that difference in position justifies limiting any distribution of subscription rights to the shareholders.

Acequia and Peabody Energy, I think are pretty closely aligned there, and the two cases that Mr. Behlmann cited after ignoring the cases that I cited to you, are nowhere to be found in PERA's brief, Washington Mutual and Breitburn, and those cases simply are not unfair discrimination cases. They're equal treatment cases under Section 1123(a)(4) involving disparate treatment of members within the same class.

THE COURT: Okay.

MR. JOHNSTON: That's not this case.

THE COURT: Mr. Johnston, I'm going to cut you off in part because I want to -- I just can't go all day, in part because I understand argument, in part because I want Judge Newsome to get the big ticket item mediated, and I want him to get this one mediated for you, the sooner the better, if possible, because I don't -- obviously you make an argument, but you should understand some of my concerns, as well. So I

would encourage your side to meet with the other side, and see if you could reach some resolution because it makes a lot of sense, but for now, I want to terminate this phase of the argument, and I appreciate your presentation.

MR. JOHNSTON: Okay. Thank you, Your Honor.

THE COURT: Okay. Mr. Bennett, are you going to add more on another subject, or this subject, or what's your pleasure?

MR. BENNETT: No, Your Honor, I don't have much to add but I do want to point, and stress what Mr. Johnston said about the other case, and this case, and that this is a case involving public securities and the issuance of even more public securities.

We have proposed a formula that actually works, that resolves the issues raised by your hypothetical. It is not by any stretch of the imagination arbitrary. It's part of a plan that should be confirmed.

THE COURT: Okay. All right. Are you going to make any other argument?

MR. BENNETT: I think that -- I don't know if I'm going to have to or not, but I know Mr. Karotkin wants me to stay on for the rest of the closing.

THE COURT: I'm not trying to get rid of you.

MR. BENNETT: No, look if you want to close me down, it's perfectly okay with me.

THE COURT: You can close yourself down. I can throw people out of the courtroom, but they can also shut me off, too.

All right, Mr. Karotkin, let me take one more moment before I come back to you. I just have to check my thing. I have Mr. Hallisey's hand up. Mr. Hallisey, I'm not going to recognize you today. You've made your point, and this isn't your issue. So I'm simply not going to interrupt our schedule, and hear from you today.

So Mr. Karotkin, I'm happy to hear from you on the closing arguments.

MR. KAROTKIN: Okay. Thank you, Your Honor. Stephen Karotkin, Weil, Gotshal, & Manges for the debtors.

I think what I'd like to do first, Your Honor, and -- is to address some of the issues with respect to the executory contracts. And I know that during the arguments that were made, I made a number of remarks and I will try to keep it relatively brief, but I would ask if you could, could you let Mr. Tsekerides into the panel.

THE COURT: Sure.

MR. JOHNSTON: He has a couple of remarks.

THE COURT: Ms. Parada, I didn't know Mr. Tsekerides was in the wings. Could you bring him in, please?

MR. JOHNSTON: Your Honor, this is Jim Johnston. I will remove myself, unless you would like to me remain.

THE COURT: Okay. Well, we'll go ahead and do it, too. Okay. Thank you, Mr. --

MR. JOHNSTON: Thank you.

MR. TSEKERIDES: Good afternoon, Your Honor.

THE COURT: Mr. Tsekerides, you put your tie back on.

MR. TSEKERIDES: I did, and I'm only going to hot seat, so I might deal with some of the document sharing.

THE COURT: Okay. All right.

MR. KAROTKIN: Okay. Thank you.

MR. TSEKERIDES: Do you want me to pull that up, Steve?

MR. KAROTKIN: Not yet. So Your Honor, I think that one thing is abundantly clear from what you heard earlier today on all of the arguments with respect to the executory contract issues, and the contribution, and indemnity issues, and that every claim, if it ever arises, and we don't know if any of these claims will ever arise, will have its own unique circumstances and how that claim should be determined, Your Honor, should wait until those claims arise, and those circumstances arise so they can be appropriate determined.

Multiple parties have acknowledged this point, and they've said this, whether 502 applies or it doesn't apply, whether a claim was fairly contemplated or not fairly contemplated, when was the -- when did the claim arise?

And in the context before you today, there's no

reason, and it would be inappropriate, in fact, to make blanket rulings, on any of these issues. I think that -- if I recall correctly, both Mr. Bray, Mr. McKane, and Mr. Schiff, said they don't even know what claims there are, or what claims could be raised but nevertheless, Your Honor, they're asking you today to give them a categorical pass on what rides through, what doesn't ride through, what obligation there was to raise a claim, or a default in connection with the cure process. In fact, I think Mr. Bray said, and I think it's a pretty good quote that, "Even he does not know every single permutation that could arise here," and that's really the point; we don't know.

These types of claims, again if they ever arise, should be addressed at the time the claims arise, and then Your Honor can apply to those particular circumstances, precisely what the legal standard is, whether it should've been -- as I said, whether it should've been raised, not raised.

THE COURT: Well, give me a -- let's have a practical answer. You're nice to say that I can deal with it. I don't know how long I'm going to be doing this. I don't know how long you're going to be doing this.

MR. KAROTKIN: I'm going to be doing it a lot less than you, I think.

THE COURT: But the problem is that, and this is what I experience all the time, it might be presented two or three

years from now to a state court judge, or a federal district court judge, or an administrative law judge, and none of the above have the knowledge, and the expertise that you and I have in our specialty. And so what do I do when Mr. Gorton's client, or Mr. McKane's client -- well, certainly to the extent that FERC is involved, but that's a little different with Mr. Tredinnick, City of San Francisco. What do I do if three years from now in the Superior Court in San Francisco, there's a debate about was some indemnity provision that was page, you know, a supplement, 2,000 pages long, did it survive the bankruptcy or not? How are the litigants and their lawyers, and the non-bankruptcy-trained judicial officers supposed to have even a clue to answer those questions?

MR. KAROTKIN: Your Honor, it's not dissimilar from any other situation where the issue of discharge comes up several years after a plan has been confirmed. And in fact, that was the precise situation in the Arriva Pharmaceuticals case where an issue as to whether a claim that should have been asserted in connection with a cure under Section 365 was later asserted in a non-bankruptcy jurisdiction, and the debtor reopened the case and brought an adversary proceeding in the bankruptcy court to adjudicate it. And that's what also should happen here, that's how it works. And then the bankruptcy court, which has the special expertise to deal with these issues under 502 assumption, what does assumption mean, can

address the issues.

As you recognized, Your Honor, this dispute basically focuses on whether all pre-petition indemnification, and contribution claims flow through when an executory contract is assumed. And as you recognized, that's not the law, and perhaps more importantly, as I just said, there's no reason to address that now.

Assumption of an executory contract under the Bankruptcy Code is precisely that, assumption under Section 365, and as you noted, it can implicate a number of factors, and as set forth appropriately by the court in the Arriva Pharmaceutical case, that's from your district, Your Honor, including an obligation, there's an obligation, to assert rights in connection with a cure under Section 365.

And if I could ask Mr. Tsekerides to put up the slide. You could put up the second -- if you could just put the third slide.

THE COURT: What am I looking at here? Is this from the brief?

MR. KAROTKIN: No, this is some slides we have that we can file.

THE COURT: Oh, okay.

MR. KAROTKIN: But Arriva Pharmaceutical makes it clear that the burden is on the non-debtor party to the executory contract to come up with all claims, nonmonetary, as

well as monetary claims, and to assert all defaults prior to the debtors' assumption. And there's a good purpose for that, Your Honor, and I think that Mr. Newman, in connection with McKinsey, which I'll address. The purpose of that is to provide the debtor with the knowledge, the knowledge of what is going on, so it can make a decision to either assume the contract, or not assume the contract, and that's why there's an obligation to go forward. And if the party comes forward with claims and indemnification claims, well, then maybe the debtor decides not to assume the contract.

But you can't lie in wait, and then assert claims later, which again, as you said, you could have asserted earlier, and that's --

THE COURT: Don't' you think the issue that most of the lawyers who argued today, or all -- I don't know them all, then you probably know a good number of them, too, they're experienced bankruptcy lawyers. And the issue is what's a nonmonetary default versus something that doesn't rise itself to default?

In other words, Arriva from the quote, and I don't -- you're going to tell me who decided it, it was one of my colleagues, I don't know by name, but I can imagine if it were my decision too, it would be -- it's a no-brainer if there's a monetary or nonmonetary default, but the problem is what if there is no default, what has to be asserted --

MR. KAROTKIN: Well, again --

THE COURT: -- by --

MR. KAROTKIN: -- again, Your Honor, I think you said --

THE COURT: There's nothing to assert, right? Huh?

MR. KAROTKIN: You said it earlier, it's the fair contemplation test.

THE COURT: Right.

MR. KAROTKIN: Do you have a claim? A fair contemplation test. And again, that should be addressed later when the claim arises, if ever, in the context of a dispute where those issues are joined.

Now --

THE COURT: Well, the problem -- by the way, I interrupted you again, the problem is we've taken a 365 concept and extended it, as I think one of the other lawyers said today, to some concepts that really go well beyond 365, and they go on --

MR. KAROTKIN: Precisely.

THE COURT: -- to discharge --

MR. KAROTKIN: Precisely.

THE COURT: -- the petition and automatic stay issues, and --

MR. KAROTKIN: Well no, I think Your Honor what they've gone onto, and what people are asserting like Mr. Bray,

is that he's saying assumption under Section 365 is the equivalent of reinstatement, or non-impairment. You -- first of all, it's not. And secondly, the argument that this is an impairment issue, you rejected in connection with the post-petition interest. In connection with post-petition interest, what the UCC argued was that impairment was the same as reinstatement, that all rights flow through, including the right to contractual interest, and you appropriately rejected that because it doesn't. That is impairment under the law, not impairment by reason of the plan.

THE COURT: That's right.

MR. KAROTKIN: And that's what they're trying to do here. What he's trying to say is ignore the requirements of Section 365, ignore the requirements that I've got to assert defaults, every default, ignore that, and give me a free pass. And again, that's not what the law is.

Now I'd go back to the first slide, which I think really addresses a lot of the issues that have been raised here. First, we will amend the proposed confirmation order that will be presented to Your Honor, to make it clear that all rights and defenses of any entity with respect to any assigned right and cause of action, asserted by the Fire Victim Trust against such entity, may be asserted against the Fire Victim Trust. Couldn't be more clearer. Could not be more clearer, addresses, I would say, eighty percent of the issues that have

been raised.

And we will also include in the order that any rights of setoff, or recoupment, or defenses, held by any entity are expressly retained, and preserved, subject to any applicable limitations to the Bankruptcy Code.

Again, we will clarify that, so there is absolutely no mistake about it, but --

THE COURT: But are you saying that these two paragraphs, which makes sense to me, also apply to any assumed contract?

MR. KAROTKIN: Yes.

THE COURT: I mean, it doesn't say it. Be careful, I don't want to --

MR. KAROTKIN: It applies to --

THE COURT: -- I don't want to set you up either because you don't want to leave for the future, something that should've been asserted before. So --

MR. KAROTKIN: Your Honor, these are rights -- this is with respect to assigned rights and causes of action.

THE COURT: Right.

MR. KAROTKIN: What the parties were objecting to is that these claims would be assigned to the trust, and they would be naked. They couldn't assert whatever rights and defenses they had if those claims had been asserted against the debtors because those -- the debtors claims are the claims that

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are being pursued by the trust.

And what we're making clear here is that to the extent they would have rights and defenses if we asserted that claim, they would have the same rights against the trust. That's what they asked for, and that's what we're giving them, and there's no issue with that. And as I said, that addresses most of their claims or most of the issues they've raised today. And certainly, Your Honor, I think it has to be absolutely clear that under no circumstances, and let me go to slide umber --

THE COURT: See, Mr. Karotkin --

MR. KAROTKIN: Oh, number --

THE COURT: -- I think I heard you talking about the 365 issue, and you put up a slide that really doesn't focus on the whole 365 issue, it's a broader issue, and I understand, I think the language that you have here is fine, and it belongs in the order, but it doesn't answer the question on these executory contracts.

MR. KAROTKIN: Well, Your Honor, that was -- most of those parties raised that issue: that in connection with confirmation of the plan and the plan going effective, the assigned rights and causes of action would go to the trust. And they wanted to make sure that their rights and defenses were preserved. So we've addressed that.

Under Section 365, Your Honor, you made it clear -- and I totally agree with you -- that there is an obligation to

come forward with defaults and claims in connection with cure. And we're agreeing with that. You can't -- there is nothing in the Bankruptcy Code or in Section 365 or any other provision in the Bankruptcy Code that says you get a free pass.

THE COURT: So go back to your slide from Arriva. Mr. -- okay. So Arriva -- right there, right on top -- cure recovers and applies to monetary and nonmonetary defaults. It doesn't say it applies to nondefaults.

MR. KAROTKIN: Well -- but Your Honor, read the next sentence. The burden is on the nondebtor party to assert all defaults: monetary or nonmonetary --

THE COURT: I know.

MR. KAROTKIN: -- to the debtors' assertion.

THE COURT: What if I said, there is -- what if I said there is no burden on the nondebtor parties to assert nondefaults? Nondefaults.

MR. KAROTKIN: I'm not sure, Your Honor, I understand what that means.

THE COURT: It means --

MR. KAROTKIN: But if someone --

THE COURT: It means if there --

MR. KAROTKIN: -- someone --

THE COURT: It means if there's -- there is no --

MR. KAROTKIN: There's no point to raise in the context later, when a claim arose, and that could be determined

in the context of the action or dispute, then they could argue that.

THE COURT: What I'm asking you is why we can't have the confirmation order say, in some, perhaps, better words, if there are no defaults and no events that might give rise to a default or nothing that would, under any circumstance, contemplate the existence of a right to assert a default, that nobody has to do anything? They pass through. I mean, I realize that's not very artful, but that's the concept.

Or stated differently, Mr. Karotkin, if you -- well, go back to my example. If you and I have a contractual relationship and everything is hunky-dory, nothing is amiss either way, and you go through and assume the contract, I don't have to do anything. And if you breach it in the future, then I have a claim against you in the future.

Right?

MR. KAROTKIN: Yes, if there is a -- if there is no default. But that doesn't permit you to come in in the future and say, oh, I forgot about something, you did something wrong; I had a -- I had a claim within reasonable contemplation, but I didn't raise it. It doesn't allow you to do that.

THE COURT: No, I agree. I agree with you.

MR. KAROTKIN: I --

THE COURT: If you had reasonable contemplation, you should have done it.

MR. KAROTKIN: And again, but what these -- what the UCC and the other parties are asking you to do is to say, ignore that.

THE COURT: No, I know.

MR. KAROTKIN: They get a free pass for everything, and that's not the law.

THE COURT: You've said it many times that this is no free pass, and I agree with you it's no free pass.

MR. KAROTKIN: Okay. And we think the way -- put aside -- I'll get to paragraph 13 that everybody's talking about, that's caused so much consternation here -- but I think -- there's one point I just -- I really have to really clarify, is on page -- slide 4. And this is with respect to an argument that the UCC made in its objection. It was kind of made half-heartedly, in my opinion, and I know Mr. Bray -- it seems to me, for obvious reasons -- didn't raise that argument today.

But he did suggest that the Court could eliminate the rights of the debtor, under California Code of Civil Procedures Section 877, on the -- on some basis. There is absolutely no basis that either assumption, reinstatement, or anything could eliminate the debtors' rights and defenses under that section. And as you, Your Honor, have repeatedly recognized, particularly with respect to claim allowance, that's determined in accordance with applicable state law.

And to the extent Mr. Bray is suggesting that if a claim for indemnity or contribution is ever raised in the future, that the debtors would not have the right to assert that defense under applicable state law, that's completely wrong. And we must make sure that that right is preserved.

THE COURT: I want to make sure that slide 4 gets in the record. So would you make sure somehow --

MR. KAROTKIN: Yes, we will.

THE COURT: Okay.

MR. KAROTKIN: We will.

So turning to the -- turning to one other point that I think is important. When Mr. Lubic -- I believe it was Mr. Lubic -- was making his argument, he said, well -- he was concerned about certain provisions of the plan that perhaps could prejudice his client's rights. And he had an easy fix. He had an easy fix, and his easy fix was -- and I think these were his exact words -- he's going to fix it by saying, notwithstanding anything else in the plan or the confirmation order, they can do whatever they want.

That doesn't work. If they have particular items in the plan or confirmation order which they think unduly prejudice their rights, we can try to address those, or the Court can try to address those. But to say a wholesale disregard of the plan and the confirmation order, which provides for so many different things, including approvals of

settlements, including discharge provisions, any number of things, including findings with respect to good faith and other items, that doesn't work.

So maybe there is a way to craft some language -- and we'll be happy to look at language that both Mr. Bray and other people suggest -- but it is a nonstarter to say, notwithstanding anything contained in the confirmation order in the plan, because that will strip us of every single right under those documents. And that will not work.

So as we stated at the outset, we think we have a solution for this. And I think, Your Honor, that you were thinking about it as well.

And I would ask Mr. Tsekerides to turn to the last page.

There is no need to make definitive rulings on these issues now. As I said, a determination can be made in the context of an actual dispute, if it ever arises. Your Honor, we don't think there are -- there will be any valid, noncontractual indemnification claims, based on the California statute. And with respect to contractual claims, we don't think there's going to be many there, because most of the contracts don't provide for indemnification. So maybe there will be claims, but we don't think a lot of claims will arise. And they can be addressed when they do arise.

There's no reason, as I said before, to make blanket

rulings. And deferring a determination is better than issuing a blanket ruling in a vacuum on the impact of Section 502(e), for example, or other matters, which are so factually oriented, and they cannot be addressed in the abstract.

But to make it clear, Your Honor, everybody complained about -- I think it's paragraph 13 in the plan supplement -- that -- we will be happy to delete that.

THE COURT: Mr. Tsekerides, scroll down to the bottom there. You got it? Okay.

MR. KAROTKIN: So we will delete from the plan supplement -- I think it's in the notice of assignment -- the language that these contractual indemnity rights are automatically discharged on assumption. People can appropriately preserve their rights. But in that context, Your Honor, they cannot strip us of our rights. And I think that that's the most logical way to proceed.

THE COURT: Is this slide 5? Mr. Karotkin.

MR. KAROTKIN: Yes, Your Honor.

THE COURT: Okay. Okay. Make sure that I get that in a hard copy, one way or another, so I can preserve it for the record. I mean, I can't do it from our screen here.

MR. TSEKERIDES: We'll file it, like the others have.

THE COURT: Okay. Thank you.

MR. KAROTKIN: Okay. So with that, Your Honor, that concludes my argument with respect to that particular issue.

THE COURT: Okay.

MR. KAROTKIN: So if I could move on? Give me a moment, please.

I have a lot of papers here.

Okay, Your Honor, I apologize. I think that the remaining issues with respect to outstanding objections -- and again, we did file, as I noted, the amended plan, which I believe addresses the issues. I think that the remaining issues raised by the governmental entities are with respect to Section 8.2(e), with respect to which there was a lot of discussion already in the context of the assumption of executory contracts; and 10.9(f), with -- which, I believe, either Mr. Gorton or one of his colleagues raised.

I think the other outstanding matters are respect to the Roebbelen objection, the Gantner, the California Franchise Tax Board, and to certain issues raised by individual fire victims and fire victim attorneys. There, of course, was the issue with respect to the registration rights agreement, which is the subject of mediation.

So turning first to the remaining governmental entities and DOJ objection, we believe -- and I said it earlier -- Section 8.2(e) is entirely consistent with what Section 365 says. And it results in a recognition that when a contract is assumed under Section 365, it results in the cure of all defaults as of the assumption date, not just monetary

defaults. I think, as I said earlier, they're trying to restrict the scope of that. We think Section 8.2 is perfectly appropriate to address the situation that I mentioned earlier, Your Honor. You have to come forward. The debtor has a right not to be surprised when it's making a decision to assume or reject, and I think that's what Section 8.2 says.

And I don't want to go through the Arriva Pharmaceuticals case again. But it's consistent with Arriva Pharmaceuticals. And I think that, Your Honor, you can -- I'll tell you who -- I'll tell you who decided that case. And it's really, directly on point. It's -- give me one second.

THE COURT: Okay. I'll find out. I don't --

MR. KAROTKIN: Judge Jelam (phonetic).

THE COURT: Judge Jelam? Okay.

MR. KAROTKIN: So I think that that addresses the 8.2 issue. And there's really no more reason to talk about it.

With respect to Section 10.9(f), frankly, Your Honor, I don't understand the objection to Section 10.9(f). It's absolutely clear that it's limited in scope. It's appropriately drafted. I don't see any way it can be interpreted in the way that Mr. Gorton and his colleagues say it can be interpreted. It's appropriately circumscribed to things -- release or exculpated pursuant to the plan, and it doesn't warrant any modification. And there's really no -- there's nothing else to say about it.

So with that, Your Honor, we believe it's appropriate, and there's no reason to modify it.

With respect to the Roebbelen Contracting objection, as you may recall, the Roebbelen claim is a partially secured claim by mechanics liens. And the objection focuses on Section 4.16 of the plan that addresses the treatment of claims of secured creditors. And there aren't many secured creditors in this case, Your Honor. Basically, that's a class of mechanics lien or is in similarly type situated people.

The thrust of the objection is that Roebbelen wants the plan specifically tailored -- the plan provision specifically tailored to their situation rather than to the treatment of all claims in the class. And that's not appropriate. They wanted us to recognize they're entitled to fees, expenses, and interest at the contract rate. And they're only entitled to that, Your Honor, as you well know, if they're oversecured. And that has not yet been determined. And the plan provision addresses it. If they are oversecured, they will be entitled to whatever they're entitled under Section 506.

I told Mr. Roebbelen's (sic) counsel, with respect to one other item, he was concerned that the provision did not take -- did not provide that, at such time as a claim became allowed, that it would be paid within thirty days. And we're happy to make that change to accommodate that.

THE COURT: Can you give me the claim number -- I mean the docket number of the objection?

MR. KAROTKIN: If you give me a minute, I can.

THE COURT: If you don't have it readily available, I can take it up later. I mean, I've got a chart of all the objections. I just don't have --

MR. KAROTKIN: Yeah.

THE COURT: I can't put my hand on everything. That --

MR. KAROTKIN: I have it. I have it. I have it. It's 7282.

THE COURT: 728- what?

MR. KAROTKIN: 7282.

THE COURT: 2? Thank you.

MR. KAROTKIN: Okay. So I think that that disposes of the Roebbelen objection.

With respect to Mr. Abrams -- and Your Honor, the debtors understand Mr. Abrams' passion and deeply regret all that happened to him and his family and his community. But that, Your Honor, is not a reason -- but that, Your Honor, actually is a reason to confirm the plan rather to face the alternative and the substantial delay in payments to wildfire victims that would be inevitable if we don't move forward with this plan.

Suffice it to say, Your Honor, Mr. Abrams' arguments

lack every -- lack any evidentiary foundation. And in fact, Your Honor, the record is directly to the contrary as to all -- almost -- virtually all the allegations he has made. Simply by way of example, Your Honor, the evidence as to feasibility is uncontroverted: billions of dollars currently being spent on wildfire mitigation and billions of dollars budgeted for the future for wildfire mitigation efforts, participation in the go-forward wildfire fund, access on the effective date to five billion dollars of a working capital facility and to the capital markets to address any potential contingencies.

Your Honor, newspaper articles are not evidence. There is no evidence of improper solicitation of votes, and there is no evidence -- I believe he said that hedge funds are going to exit the stock immediately. And there's, similarly, irrelevant information or allegations he's made with respect to claims trading and the fact that claims may have been purchased at a discount. That is irrelevant to the findings you must make under 1129(a).

I think -- we understand that Mr. Abrams and Ms. Wallace may be unhappy with the plan. Tens of thousands of other fire claimants, however, are not. And neither he, Ms. Wallace, and, for that matter, Mr. Scarpulla or Mr. Hallisey, have presented any evidence to frustrate the wishes of those tens or thousands of claimants.

Mr. Scarpulla and Mr. Hallisey have presented no

evidence in -- their suggestion that the plan be modified across the three fire victim classes is not a solution. That's only a path, Your Honor, to complete chaos, determination of the RSAs, and months and months and months of delays, and value destruction.

Mr. Tosdal focused primarily on plan classification issues. As you said, Your Honor, you have already addressed this issue in connection with your recent decision with respect to the Adventist dispute regarding the fire victim trust claims resolution procedures. I think it's been more than adequately demonstrated in the evidence that we've presented that requirements for classification under the plan have been satisfied. Section 1122(a) does not require that all similar claims be in the same class. And as you well know, a debtor has substantial discretion to place similar claims in different classes.

There simply has to be a business or economic justification to do so or that it makes economic sense. The testimony before the Court demonstrates the justification for classification based on factors, Your Honor, among others, of settlement history, the differences between subrogation claimants and fire victim claimants, the fact that fire victim claimants had their own official committee -- or have their own official committee in this case, with no representatives of the subrogation claimants, and the unique relationships that the

PG&E Corporation and Pacific Gas and Electric Company debtors have with the public entities who signed settlement agreements.

And one thing Mr. Tosdal did say is that the Dow Corning case supported his argument that settlement dynamics are an improper basis to separately classify claims. Well, that's just plain wrong. And in fact, Dow stands for precisely the opposite principle. In Dow, certain claimants challenged the separate classification of breast implant victims based on geographic location. And in upholding that classification, the court noted:

"We begin by noting the fairly obvious point, upon which there is virtually no disagreement. All breast implant claims, both domestic and foreign, are substantially similar. All are unsecured, unliquidated, and disputed toward claims arising out of the debtors' fail and manufacture of silicone gel breast implants. All such claimants allege that the breast implants caused or will cause them personal injuries."

Again, the same argument that Mr. Tosdal was trying to make, which really doesn't even apply here.

Then the Court further stated, "In upholding the classification, the separate classification of those claims based on geographic location, the debtor made a considered judgment as to what" settlement amounts -- "what settle amounts the various breast implant payments would accept in resolution of their claims. The fact that, in the debtors' judgment,

different breast implant claims warrant different settlement offers is a perfectly legitimate reason to classify them separately."

So to the extent that Mr. Tosdal was raising that argument should be rejected.

Here, in part, settlement dynamics did drive the classification, and that is similarly appropriate, as was found in the Dow Corning case.

I want to quickly address the Gantner objection with respect to PSPS, and some remarks that Mr. Harris made on the record to suggest that I agreed with what he was saying. I'm not sure that I did agree with what he was saying.

First of all, just to make it abundantly clear, the debtors by no means admit that any claims that could be sustained based on PSPS are administrative expense claims. And as I'm sure you're aware, Your Honor, Mr. Gantner filed his complaint asserting, I believe, that same type of an argument. That complaint was dismissed on the pleadings. And as we stated in our reply, there is no reason that the plan has to state or acknowledge that all claims related to PSPS are administrative claims. In the unlikely event any of those claims are sustained -- and we don't think that's possible, certainly, based on your ruling and the applicable law -- and if it -- if they are sustained and if they are determined to be administrative claims, then they will be treated as

administrative claims under the plan. No modifications under the plan are required to address the particular PSPS circumstances.

As to the California Franchise Tax Board, we've made several modifications to the plan to accommodate this objection. To the extent there are any remaining objections -- and I don't know whether there are -- they should be rejected. The plan's treatment of priority tax claims is entirely consistent with Section 1129(a), and it should be approved.

Lastly, a few remarks, Your Honor, on Mr. Kelly and Mr. Skikos' remarks, and just some final words. Mr. Kelly and Mr. Skikos spoke briefly on behalf of their clients, and I think it's important to note that Mr. Kelly's firm signed the tort claimants' RSA, as did Mr. Skikos, I believe, which set forth the settlement that is embodied in the plan, including the formula for the stock portion of the consideration to be delivered to the fire victim trust, and the formula for determining those shares.

Under these circumstances, for Mr. Kelly to assert last week, Your Honor, not once -- not once, but twice, that fire victims were forced -- that's his word -- were forced to take the stock is a bit disingenuous. They voted overwhelmingly to accept the plan, to accept the stock, with full disclosure as to the value or the potential fluctuation in value of that stock. That disclosure was approved by the

Court, and there was supplemental disclosure drafted by the tort claimants' committee that addressed the very same issues.

And with respect to the registration rights agreement, I don't want to get into that. They addressed that as well. That's currently being mediated, and I don't think there's any reason to address the issues they raised at this time. But we will be prepared to do so if that doesn't get resolved.

And I don't really want to address the comments Mr. Julian made with respect to his solution that he proposed last Friday and that you questioned him about today, as to what should be contained in a proposed order. Suffice it to say that we believe that that language is totally inappropriate. But hopefully, Your Honor, Mr. -- Judge Newsome will be successful in bringing that to a mediated solution relatively quickly.

Your Honor, as I said at the outset of my opening remarks last week, the plan before the Court represents a remarkable achievement: a virtual universal consensus including all CPUC approvals, the support of the Governor's office in compliance with A.B. 1054. The fire victims have spoken, and the debtors have plainly demonstrated that the plan satisfies the requirements for confirmation under A.B. 1054.

Your Honor, no objecting party -- no objecting party has presented any cognizable evidence to support their objections, much less to defeat confirmation and the will of

the claimants. In fact, Your Honor, as I've said previously, confirmation is the only path here. Any other path will be value destructive, eliminate any chance of meeting the A.B. 1054 deadline, and getting the protection of the go-forward wildfire fund prior to the next fire season, and perhaps most importantly, Your Honor, will delay distributions to fire claimants for months, if not year.

Your Honor, we've met our burden. The debtors have met -- the plan proponents, I should say, have met their burden. We urge you to promptly confirm the plan.

Thank you.

THE COURT: Thank you, Mr. Karotkin.

A couple of questions for you. If there's a solution and a successful resolution of the rights issue in the coming days, I presume I will hear about it fairly soon, as will a lot of other people, and I don't have to be concerned about it. And -- but if not, I presume I should -- from what you've said this morning, at least for the next few days, there's nothing pressing for me to act on so that -- you said, if I can cut this right, next Tuesday -- that's eight days from now -- I will hear the motion to adjust the backstop matters. And I won't even hear it if there's no objection, presumably. But -- and so that's out of the way. And the process can then begin by the people that need to go on that piece of the -- of it.

If, for some reason, the --

MR. KAROTKIN: Not without the registration rights agreement being resolved.

THE COURT: Well -- but I thought you told me that -- well, okay. Then I -- maybe I conflated what you said, because you made it -- you made it clear that the debt financing is not time -- I mean, they need to get moving on that and will do so after next Tuesday. But on the --

MR. KAROTKIN: Right.

THE COURT: -- debt financing, that's -- that depends upon the rights agreement, right, or I got that wrong?

MR. KAROTKIN: No, I think, Your Honor, that's right. I think the debt financing could move forward earlier. And as I -- I also suggested to Your Honor; perhaps we could have a separate order to address the debt financing.

THE COURT: Yes, I understood that. But maybe I misunderstood you that that was the order that dealt with what's coming up next Tuesday. Maybe I got that confused. So --

MR. KAROTKIN: No, no. I don't think -- no, that's the debt financing, not the equity financing.

THE COURT: Okay. Let me rephrase my question then, because I don't want to beat this to death for now. I --

MR. KAROTKIN: And if Mr. Bennett -- I'm sure he will clarify any mistake I've made in trying to explain what's going on.

THE COURT: Well, he's smiling, and he's not unmuting himself. So let me try it again.

I have to think about what I have to do, okay? So finally, the matter's submitted to me. And obviously, the more things that get resolved, the better. So if the committee, the OCC, and the various governmental entities and agencies fall in line, then that solves my problem. And if the mediation that Judge Newsome is overseeing is resolved favorably, that solves the problem. Those are two things that will be out of the way.

But let's take -- going back to those two, if there's not a resolution, then I believe it's up to me to make the decision on the disputes that we've been discussing most of today on executory contract, et cetera, et cetera. And if there is no announcement of a resolution of the mediation, at some point, somebody has to tell me that it's time to listen to the arguments and make whatever decision that I'm supposed to make. And I'd rather just leave it at that.

And so -- and it's -- so the issue of debt financing and equity financing are different, but at least the nearest thing that has a time sensitivity to it is a week from Tuesday.

MR. KAROTKIN: Well --

THE COURT: June 30th lurks out there, and I'm not planning to wait until June 30th to issue a decision. I want --

MR. KAROTKIN: But I think with respect to the debt

financing, Your Honor, if it would be possible to get a short form of order from you sometime this week, that would, I think, alleviate some of the pressure on you as well.

THE COURT: Okay. Well, I think what I said this morning -- if I can keep track of everything I said this morning -- is that maybe if the two official committees sign off on it, I could just do it without anybody in a dispute there. There may be some people that have an issue, but I just can't solve everything at this point.

And if, at some point in the coming days, there is an impasse and no likely mediated result on the rights offering question, then somebody's got to tell me what to do and what -- when I should focus on it.

MR. KAROTKIN: You mean registration rights.

THE COURT: Sorry. Registration. Registration.

So my homework assignment is to sort through these issues that we've been arguing about, eliminate those that have been resolved, those that might get resolved in the coming days, and then issue a decision. And I will tell you, Mr. Karotkin, I'm still -- I won't say that I'm comfortable, but I want to avoid problems of getting down into phrases or -- phrases or languages in an order. So we may have to have a hearing just to discuss the finetuning of the order.

But I can't -- and it's not fair to you; it's not fair to the litigants; it's not fair to anybody to turn that into a

new round of briefing and a new round of debates and discussion. I might very well, if necessary, have a hearing where we just go right down the list. This is this; this is this; this is this and tell you what I'm prepared to do.

But the more things that get resolved, the better. So my expectation will be to issue something in -- well in advance of June 30th and leave it at that.

So I want to thank you, particularly, and all the -- your colleagues on your firm and for the thorough preparation and presentation in this argument. I don't mean to exclude Mr. Banner (phonetic) or Mr. Johnson or the committees or their counsel. This has been an enormous effort by a huge number of people working for their respective goals. And I am blessed by -- and burdened -- by their competence and thoroughness. And I'm doing my best to do what I can.

I am going to do, again, what I don't like to do. I'm going to decline further argument. I see hands that come back again from Mr. Abrams and Ms. Wallace. And now I see Mr. Etkin.

Mr. Etkin, again, I don't mean to be rude. I'm simply not going to reopen argument.

And Mr. Abrams, as I said before, you filed something. It's not an action item. If you take offense at something that someone said, I'm sorry about that.

And Ms. Wallace, much the same to you. I don't mean

to minimize your situation, but I'm simply not going to interfere with my next job. And my job is to work through these very complicated, thoroughly briefed arguments and detailed documents and evidence and make a decision.

So I'm going to thank you all. I'm going to conclude the hearing and wish you well. And the ball's in my court to do what's next. Thank you for your argument.

MR. KAROTKIN: Thank you, Your Honor.

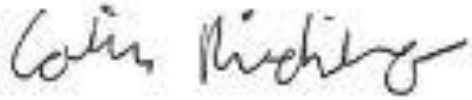
MR. TSEKERIDES: Thank you, Your Honor.

THE COURT: Thank you.

(Whereupon these proceedings were concluded)

C E R T I F I C A T I O N

I, Colin Richilano, certify that the foregoing transcript is a true and accurate record of the proceedings.



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/s/ COLIN RICHILANO

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Date: June 9, 2020

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